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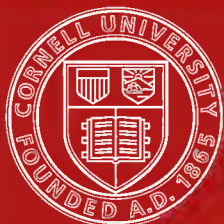
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STATE OF NEW YORK.

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PUBLIC PAPERS

OF

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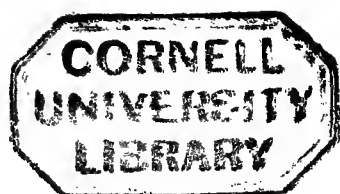
GOVERNOR.

1885.

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PUBLIC PAPERS  
OF  
GOVERNOR HILL.  
1885.

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ANNUAL MESSAGE.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, January 6, 1885. }

*To the Legislature :*

The election of Grover Cleveland to the Presidency of the United States having occasioned his resignation as Governor, it became the duty of the Lieutenant-Governor, under the Constitution of our State and established precedent, to assume the office of Governor.

That duty I have this day undertaken.

Deeply impressed with a due sense of the responsibilities of the important public trust which has devolved upon me, I indulge in the hope that by the blessing of God I may be able to discharge its duties so as to meet the approval of my fellow-citizens and advance the interests of the State.

I am not unmindful of the embarrassments which surround me.

The fact is realized that neither branch of the Legislature is in political accord with the Executive, but this circumstance ought not necessarily to prevent a harmonious,

patriotic and united effort to give to the whole people the blessings of a pure, economical and wisely administered government, conducted on business principles.

Your aid and co-operation is earnestly invoked in the mutual endeavor to sink partisan differences and harmonize conflicting interests in our joint labors in behalf of the promotion of good government and the highest interests of the people.

By the Constitution the Executive is required "to communicate by message to the Legislature, at every session, the condition of the State, and to recommend such matters to them as he shall judge expedient."

I proceed to discharge this duty.

It should be stated at the outset that there having been created from time to time so many new and different departments and commissions pertaining to the State government, that it becomes almost impossible within the proper limits of an annual message to fully set forth their condition, management, or the work accomplished by them, or even briefly to allude to many of them.

A single glance at their number sufficiently attests this fact.

In addition to the regular departments, the heads of which are elected by the people, there are the following: The Departments of Banks, Insurance, Public Instruction, State Prisons, Public Works, Railroads, Board of Claims, Bureau of Labor Statistics, Civil Service Commission, State Board of Charities, State Board of Assessors, the Military Department, Regents of the University, New Capitol Commission, Quarantine Department, Commissioners of State Reservation at Niagara, Commissioners of Emigration, Trustees of Public Buildings, State Board of

Health, the State Dairy Commissioner, the State Commissioner in Lunacy, the Superintendent of Salt Springs, the Superintendent of the Adirondack Survey, the Board of Commissioners of the State Survey, and some others, all of which make annual reports to the Legislature, besides several temporary commissions which make special reports.

The omission, therefore, to particularly mention many of such departments or commissions is not to be construed into any lack of appreciation of their importance, their usefulness or the ability with which they are severally conducted, but is occasioned solely by the necessity of curtailing this communication; and where some of them are especially referred to, it is in such cases not deemed essential or advisable, save in a few instances, to aggregate much detailed information or many figures or statistics pertaining to them, even at the risk of this course being regarded as an innovation on the usual custom.

In a short time there will be transmitted to you by the heads of the various departments, their annual reports, and by several existing commissions their special reports, all containing full and detailed information of the situation, conduct and workings of their respective bureaus, with such recommendations as they desire to present, and to such reports the Legislature and the public are respectfully referred.

#### CONDITION OF THE STATE.

While the country at large has been for some time suffering under a general depression of trade, and our own State has shared in the universal stagnation of business, yet, in many respects, its material welfare has not been seriously affected or disturbed.

It is believed that in the near future there will be a revival of public confidence and a consequent restoration of prosperity.

The public finances are in a satisfactory condition.

The total debt of the State has been reduced to \$4,399,018.02, and the amount of taxes received by the Treasurer from corporations alone during the past fiscal year was \$1,603,612.75.

The tax rate fixed by the last Legislature of  $2\frac{2}{4}$  mills on each dollar will raise on the present State valuation of \$3,014,591,372 the sum of \$7,762,572.78 for the needs of government.

During the past year valuable progress has been made in all that concerns the material interests of the State, both in legislation and in administration.

Its sanitary condition has been improved.

Its public schools have been increased in efficiency and usefulness.

Its charities have been liberally but discreetly dispensed.

Deception in sales of dairy products has been prevented by statute, and a State department in the interest of dairymen has been created.

Extravagant salaries for public officials have been reduced.

A State Board of Pharmacy has been provided.

The interests of agriculture have been fostered.

Additional rights have been conferred on married women.

An effort for the improvement of tenement-houses has been inaugurated.

Responsibility in the municipal government of the city of New York has been centered to some extent in the mayor.

Child labor by contract in houses of refuge and penitentiaries has been prohibited.

The Civil Service Act has been improved and its provisions extended.

In addition to these marked indications of reform and advancement there are other evidences of successful government.

The burdens of State taxation have been materially reduced.

There have been no serious disturbances of the public peace.

Not an official of the State has been guilty of any defalcation or mal-conduct in office.

There has been no unusual amount of pauperism or crime.

Public order has not been endangered and personal liberty has been everywhere preserved and protected.

The abuses of the past have been greatly remedied.

Labor is respected; the public credit has been maintained; and the standard of official honesty has been raised.

Besides these manifestations of wholesome administration and good government during the year of 1884, your attention was called in the last annual message to the important and salutary work which had been accomplished during the preceding year of 1883, and there is no occasion for its repetition here.

It may be safely asserted that the administration of Governor Cleveland for the two years past has more than met the just expectations of the people, and made its lasting impress on the annals of the State.

It has been brilliant in its sterling integrity, safe in its true conservatism, bold in its efforts for reform, faithful in its adherence to pledges, and vigilant in its opposition to corruption.

Its straightforward and business-like conduct, united with an unquestioned honesty of purpose, has won for it and for himself the warm approval of his political friends,

the sincere respect of his opponents, and the unswerving and unselfish support of independant citizens everywhere.

That he may meet with the same degree of success in the greater office to which he has been called, is the earnest wish of all the citizens of this State and of every lover of good government.

#### BANKS.

Eight new banks have been organized during the year, and two converted from the National to the State system, one closed voluntarily and four failed.

On October 1, 1884, there were nineteen regularly organized trust, loan, mortgage, guaranty and indemnity companies doing business in this State.

It may well be claimed that the time has arrived for considering the expediency of enacting a general law to apply to the formation of trust companies. Their privileges and powers should be uniform and more definitely defined and the authorization to conduct such business should be obtained through the Banking Department and only when the wants and necessities of commercial interests require, and the incorporators should be men of known integrity and business ability. Of recent years the increase in the number of these institutions through legislative enactments has been more rapid than it would seem the interests of legitimate trade and commerce require.

There is considerable complaint that private banks or firms are permitted to transact banking business under corporate names. The list of concerns doing business in such manner is very large.

It would seem that no such institution should be permitted to conduct its business by means of advertisements or

otherwise, so as to lead the public to infer that it was in fact a corporation duly organized under the general law and surrounded by all the safeguards which have been the fruit of corrective legislation.

Private banking, like any other legitimate enterprise, should be fostered and encouraged, but where it is sought to be transacted under names which imply a corporate existence, it should be so guarded as to prevent deception.

While this subject is under consideration the Legislature might well go further and determine the expediency of placing all private banks receiving deposits under the inspection and limited authority of the Superintendent of the Banking Department, thereby affording greater protection to the public, who usually implicitly rely upon the solvency of such institutions with little or no knowledge of their actual responsibility.

The law should provide every possible security for the innocent depositor that reasonably can be demanded.

#### INSURANCE.

Very little needs to be said upon this subject. Under the able management of the present most efficient Superintendent of Insurance the affairs of that department are in a very satisfactory condition.

Nineteen co-operative insurance associations of this State have been incorporated by the Insurance Department, under the provisions of the Co-operative Insurance Law, passed April 2, 1883 (chapter 175, Laws of 1883), and one co-operative association from another State has also complied with the provisions of said act and been admitted to transact business in this State during the past year.

During the past ten years co-operative insurance has become one of the most important interests in the State.

It is emphatically the people's insurance, and when honestly managed confers incalculable benefits upon them and their families.

The legislation above referred to, heartily enforced as it has been by the Superintendent, has placed it on a secure basis under State supervision.

That further legislation may be required is probable, and it is to be hoped that the Legislature will not relax its watchful care over this important interest.

#### STATE PRISONS.

The subject of the employment of prison labor demands the prompt attention of the Legislature.

The recent history of that subject and its present *status* are briefly as follows:

For many years the convicts have been employed under what is known as the contract system — and viewed solely from a pecuniary standpoint it is claimed that the results of that system have been satisfactory to the State.

Whether it has been entirely just to industrial interests outside of the prisons is another and a different question.

The Legislature of 1883 inaugurated the steps which must be regarded as having culminated in the condemnation of that system.

A bill for its abolition passed the Assembly that year, but upon reaching the Senate it encountered fierce opposition, and it was stoutly claimed by the minority who were opposing the measure, that the people would not approve of the proposed abolition, and by reason of such persistent claim it was deemed wise to submit the question to the

electors of the State, and accordingly a bill passed both houses and became a law providing for the expression of the opinion of the people of the State upon the subject, and at the annual election of 1883 the people voted upon the question and by a majority of 138,916 votes declared in favor of the abolition of the contract system.

The duty of the Legislature of 1884 was therefore plain. In obedience to the expressed will of the people it should have promptly abolished the system and should have early proceeded to adopt the best possible substitute for it.

It is to be regretted that such duty was not fully performed.

The Legislature at first authorized the appointment of a commission to investigate anew the whole subject of convict labor and to make a report thereon, but distinctly refused to restrict its labors or its report to the simple procurement or recommendation of a substitute for the contract system; and such commission being unable for want of time to complete so vast an undertaking, no distinct report upon the subject was made; and the Legislature finally did pass an act providing that "the Superintendent of State Prisons shall not, nor shall any other authority whatever, renew or extend any existing or pending contract, or make any new contract for the employment of any convicts in any of the prisons, penitentiaries or reformatories within this State;" but it omitted to expressly provide any other system of labor for such institutions, or to provide any means or moneys sufficient for the proper employment of such labor on the expiration of then existing contracts.

In the light of such and other facts, it was seriously disputed whether this act was intended as a permanent aboli-

tion of the contract system or only as a temporary expedient.

In December last the hollowware contract, employing two hundred and ten men at Auburn, expired ; and by the abandonment last fall of the boot and shoe contract at Auburn prison by the contractors, some one hundred and fifty men were thrown out of employment ; and by the failure of the New York State Clothing Company, the entire force of Clinton prison was left idle.

None of these events or contingencies having been provided for by the Legislature, it appears that the Superintendent of State Prisons, under a strained construction of existing statutes, met the emergency by assuming the responsibility of using the usual annual appropriation for maintenance for the purchase of sufficient machinery and materials to employ such convicts in manufacturing on State account, and to a greater or less extent they have been so employed in such manner up to the present time.

It should be stated that next month the axle contract at Auburn Prison, employing two hundred and fifty men, will also expire.

It thus remains for the present Legislature to consider this subject of prison labor at the earliest practicable moment, to the end that some proper system may be adopted and become the permanent policy of the State.

There would seem to be no need of any further commissions to re-investigate the subject.

The Legislature itself is competent to dispose of this question without the necessity of imposing any additional expense upon the taxpayers of the State. The committees on State prisons of the respective houses can readily

perfect a measure in the space of two months' time by the exercise of ordinary diligence and attention.

It would greatly aid the solution of the matter if those committees should be composed of intelligent legislators who are not or have not been known champions of the contract system, but those who will bring to the discharge of their important duties strict impartiality, fair business capacity, and a sole desire to subserve the best interests of the State.

Upon the Legislature rests the responsibility of a wise disposition of this question.

It is expected that a movement will be made during the present session for the continuation or restoration of the contract system, and it is understood that the present Superintendent of State Prisons favors that policy of prison management.

Such an effort, it is submitted, should not be encouraged.

In view of the unmistakable sentiment of the people upon the subject, the abolition of the contract system should be regarded as finally settled, and the Legislature should proceed, in entire recognition of that fact, to simply endeavor to provide a suitable and well perfected system to take its place and furnish the necessary means for its operation.

It should be borne in mind that financial considerations alone should not determine the propriety of any system.

While it is very desirable that the prisons of the State should be self-supporting and should not become a burden to the taxpayers, it is likewise important that there should be no attempt to realize a profit from convict labor at the expense and to the injury of outside industrial interests.

The welfare of the mechanics and workingmen of the State

should be consulted as well as the demands of the State treasury.

These men pay their proportion of the State taxes and their honest labor should not be embarrassed by injurious competition with convict labor so far as it reasonably can be avoided.

It is not expected nor would it be entirely appropriate that the details of any particular plan proposed for the employment of prison labor should be set forth or urged in this communication. Such procedure might be construed as encroaching on the recognized prerogative of the Legislature itself to provide the specific modes of accomplishing desired results.

It may, however, properly be submitted that in whatever measure may be contemplated by the Legislature, it should not only aim to make our penal institutions self supporting and to avoid keeping the prisoners in idleness, but care should be taken to provide against unnecessary interference with outside industrial interests.

To prevent such interference was the principal object intended by the people to be accomplished by the abolition of the contract system, and it should not be lost sight of in the framing of a new one.

In this view it is suggested whether it would not be advisable to enact that the trades carried on in our penal institutions should be equalized and diversified by providing that no more than a limited number of convicts should be kept employed in any one branch of business, and that the prison products should not be sold for less than market prices under such reasonable rules and regulations as may be duly prescribed; and in that event it would seem to be requisite that the Superintendent of

State Prisons should be invested by statute with a limited supervisory control over the reformatories and penitentiaries (over which he now has no jurisdiction), in order that one recognized head or authority might properly carry out the objects sought to be obtained by such an enactment.

It is believed with confidence that the present Legislature will determine and settle this subject in a satisfactory manner and with a due appreciation of the magnitude of the interests involved.

#### CANALS.

The amount of business transacted upon the canals, their general condition, management and supervision, compare favorably with recent previous years.

For a number of years no substantial improvements having been made upon the canals, it seemed absolutely necessary that an effort should be made to restore and renew as far as possible the structures of the Erie canal and its banks.

Accordingly with this subject in view the Superintendent of Public Works during the past year has very properly caused skilled mechanics to be employed upon the masonry and woodwork, and twelve new scows, each manned with a crew of good men, have been engaged since June last up to the close of navigation, in the work of raising the banks where they were low, and strengthening them where they were weak, and otherwise proceeding to restore the canal to its original condition, and when this work shall be completed the towing-path will be covered with a heavy coat of gravel from Albany to Buffalo.

The value and efficiency of this work as well as the general satisfactory condition and management of the canals during the past year, has been approved and com-

mended by a committee from the Produce Exchange of New York, who carefully inspected them along their whole line.

The people having heretofore voted to make the canals free, and being resolved to maintain them for the promotion and benefit of the commerce of the State and country, it is clear that they should be preserved in a condition of efficiency and improved in a practical manner as the necessities of business from time to time shall require.

In providing for their maintenance and improvement there should be exercised neither prodigality on the one hand nor parsimony on the other.

#### NATIONAL GUARD.

The National Guard of our State has never been in a more serviceable and effective condition. Although not increased materially in numbers, it has in many ways been brought to a higher degree of proficiency, the result in a great measure of the tours of duty of nearly the entire Guard at the State camp at Peekskill, the purchase of which, with a suitable and sufficient appropriation for necessary changes and improvements, is earnestly recommended.

The adoption of the new State service uniform by nearly every command in the State has greatly improved the appearance of the Guard, and the practical serviceability of this uniform, besides the manifest benefit of a common dress, has, I think, been satisfactorily demonstrated.

The proper housing of several regiments of the Guard has received attention, and new armories will soon be under way.

The Guard as a whole has grown more efficient, and the State has a system of citizen soldiery on which it may securely and confidently depend.

#### BOARD OF CLAIMS.

The propriety of the act of 1883, abolishing the Board of Audit and Canal Appraisers, and substituting therefor the present Board of Claims, is now generally admitted.

The latter Board, which possesses all the attributes of a court, is diligently discharging its duties with signal ability and with entire satisfaction to the people of the State.

It has heard upwards of two hundred claims during the past year, and the claims which have come before the Board aggregate upon the general calendar about seven hundred, and those upon the appeal calendar, transferred to it from the Canal Board, about three hundred.

It is an important tribunal, not only to the State, but to all its citizens. A prosecution before it is the only method by which a citizen can legally enforce his just claim against the sovereign State.

The theory of the law is that the Board stands impartially between the claimants and the State, and that it will exhibit the courage and exercise the discrimination to promptly allow every honest and deserving claim and to reject every unmeritorious and fictitious one. There is every reason to believe from the work accomplished by the Board thus far that it is faithfully fulfilling the beneficent purposes of its creation.

#### SPRING ELECTIONS.

In the city of New York there are chosen at the general election, certain officers who are connected with the municipal government of the city of New York, and who have no

direct relation to the State or county officers elected at the same time.

These officers are twenty-seven in number, namely:

A mayor, who holds his office for two years.

A comptroller, who holds his office for three years.

A president of the board of aldermen, who holds his office for one year, and

Twenty-four aldermen, of whom each holds his office for one year.

Prior to the year 1870 the municipal officers in the city of New York had been chosen, not at the general election, but at what was known as the charter election held for many years in the spring, but more recently in the month of December in each year.

It was found, however, that the December charter election following closely upon the general election of November failed to attract the general attention of voters, and to induce a more general participation it was provided by law in 1870 that the municipal officers might be voted for on the same day of the general election in November for the State and county officers.

Almost immediately the evil of this association was developed in the practical difficulty of relieving the choice of local officers from the influence of strictly partisan politics and of conducting an election for the State or National officers free from the embarrassment of local contests. An opportunity for what is known as "trading" was afforded to working politicians interested in local offices, and the opportunity was not disregarded. The consequences were unjust alike both to the people of the State outside of the city of New York, whose interests were subject to the overwhelming influence of an enormous vote in the city of New

York cast largely in consideration of local interests, and to the citizens of that city, whose local contests were embarrassed by the introduction of general issues liable to determine questions with which they were not necessarily connected.

Accordingly, upon the accomplishment of the great reform movement in 1871, the committee of seventy in the new charter which passed through the Legislature of 1872, proposed a return to the ancient system of spring elections for charter officers.

The proposed charter was vetoed by Governor Hoffman, who objected to the provision concerning spring elections chiefly upon the ground that it was proposed to hold them in the month of May, a most unpropitious time, because the then general habit of removal upon the first day of May in each year led to such changes of residence as would disqualify many from voting at an election to be held within thirty days thereafter.

In the succeeding year, 1873, the present charter of the city was enacted, continuing the practice of choosing the municipal officers at the time of the general election.

In the eleven years that have passed, public opinion both in the city and in the country has strengthened in support of the sentiment, which found expression in the charter of the committee of seventy against a common election of general and local officers at one and the same time.

Common experience has testified to the evil of this system, and the principal if not the only argument for its retention has been that it avoids the expense and the loss of public interest incident upon too great frequency of elections.

Both of these objections would be in large measure removed if it were to be provided by law that the terms of office of all elective municipal officers in the city of New York should be two years, and that such officers should be chosen at a municipal election to be held in the month of April in every alternate year beginning with the year 1887. This would leave undisturbed the terms of all present incumbents, except the Comptroller, whose term expires December 31, 1887. It might be provided that the succeeding term of this office should begin January 1, 1888, and expire April 30, 1889. The terms of office of all other municipal officers chosen in November, 1886, should expire April 30, 1887. The system thus introduced, without injustice to any present incumbent, would be well worth a trial, and would relieve the next presidential election of one element of uncertainty and irritation which has given dissatisfaction to many of the people throughout the State.

#### THE CIVIL SERVICE.

At the beginning of the last session of the Legislature, the preliminary action had been taken under the act of 1883 to apply the methods of civil service in this State, and also in some cities. The classification of the State service had been made, and the rules prepared and officially promulgated. The report of the State Commission, submitted during the session of the Legislature, gave a detailed account of the work of the Commission, and of the progress made to the date of the report. The new system under the act could not take effect until the 4th day of January, 1884, and then only applied to new appointments to be made after that date. It was inopera-

tive in respect to persons holding positions, except in the matter of promotions.

Important and substantial progress has been made during the time that has since elapsed. By legislative amendments of 1884, it is believed that the statute has been materially improved, and better facilities provided for the work of the Commission. Civil service regulations were also made imperative in all the cities of the State, and were extended to all departments of the municipal government, except the educational. Under the original act, civil service regulations were optional in cities of over fifty thousand inhabitants, being only seven in number, and were restricted, so far as the mayors had authority, to only a small portion of the municipal offices. The mayors of New York, Brooklyn and Buffalo, however, with commendable public spirit, availed themselves of this option, and instituted civil service regulations in their respective cities to the extent of their authority.

The duties imposed upon the State Commission by the amendatory acts of 1884 have been met by the Commissioners with diligence. The classification of the State service has been modified and more positions placed in the competitive schedule. The rules have also been carefully revised and corrected, and the preference given by law to honorably discharged Union soldiers and sailors has been incorporated in the rules.

The appointment and promotion of the large body of public employees in the State service, and in the municipal service, are now no longer subject to the caprice or favoritism of frequently changing officials, but are regulated by impartial, judicious and permanent rules, under which ascertained merit alone is the basis both of appoint-

ment and promotion. A reform founded on a principle so just, and which aims to secure good character and efficiency in the public service is worthy of a thorough and patient trial.

The complete results of civil service methods cannot at once be apparent. They can only gradually appear. The foundation of the system has been laid. The evils of the patronage system have been suppressed. The new system is fairly inaugurated, and the instrumentalities for applying it are believed to be judicious and thorough. As in the case of all other reforms, radically changing existing methods, time will be required to disclose by practical experience its advantages and to remove its defects.

It, however, has been suggested that it might be advisable at this time to provide by statute in substance that the examinations should be entirely practical, and should be confined or limited to the qualifications of the applicant for the particular branch of the service which he seeks to fill, or otherwise restrict or regulate the same so as to insure practical tests of fitness for the office sought, as distinguished from theoretical ones merely; and it is claimed that such amendment would be more likely to secure actual competency and real fitness, as well as render the system more acceptable to the great masses of the people who are now said to regard it with some jealousy and distrust. It is possible that no further amendment is necessary, and that the desired object can be accomplished under the existing statutes by the voluntary action of the Commission.

The whole subject is commended to your thoughtful consideration.

With an earnest conviction that the system of civil

service which our State has been the first to apply, is full of promise for the better administration of public trusts, and a remedy for many evils that have long been regretted, I recommend that the Legislature continue to give such countenance and support to the work of the State Commission as will best promote the system, and give to the people of the State its full benefits.

#### NATURALIZED CITIZENS.

Our election laws provide for the registration of voters in all cities of the State and all villages of over 7,000 inhabitants.

They also provide that in the city of New York no naturalized citizen can be registered unless he produces his naturalization papers before the board of registry, and in the city of Brooklyn the same provision exists as to all persons naturalized since 1867. In case he has lost, mislaid, or accidentally destroyed his papers, and does not chance to have in his possession a duplicate or certified copy thereof to produce, he is or may be absolutely prevented from registering and is consequently deprived of his vote.

In the other cities and villages of the State where registration is required, no naturalized citizen can be registered unless he produces his naturalization papers or a certified copy thereof, or proves their loss or destruction "to the satisfaction of the board of registry." The latter provision, however, is of very little value to the naturalized citizen because the board may arbitrarily refuse to be satisfied by his oath of their loss or destruction, as is very frequently the case, and there is no adequate remedy and he is prevented from registering and voting.

The large number of naturalized persons throughout the State, being many of our best and most valued citizens, the liability of their naturalization papers being mislaid, lost or destroyed, and the inconvenience as well as hardship of requiring such papers to be kept constantly on hand to be produced at every registration, coupled with the fact that children of a naturalized father when they become of age may legally vote upon their father's papers, but of which papers they have neither the custody nor control, and the further fact that naturalization may have occurred many years ago and in distant States, and the procurement of copies may be a matter of difficulty and delay, present strong considerations in favor of the propriety of an amendment to these laws, removing these unnecessary restrictions upon the right of naturalized citizens to register.

The path to the ballot-box should be as free to the adopted citizen as to the native born.

These laws should be modified so as to dispense with the present arbitrary requirements in regard to the production of naturalization papers and should provide that a naturalized citizen may be registered with the same facility as any other person, and if his right is challenged or the fact of his naturalization disputed, he should be permitted to make oath to the fact, which oath should be conclusive for the purpose of such registration. If the vote should be false he afterward can be prosecuted both for perjury and for false registration. His oath as to his own naturalization should be just as sufficient and conclusive as is the oath of any other citizen as to the fact of his residence and other qualifications.

The privilege of voting by a foreign born citizen in New York, Brooklyn, or elsewhere should not absolutely

depend upon his ability at all times to produce his naturalization papers ; and in no part of the State should it be in the power of any board of registry by the exercise of any discretionary or *quasi* judicial powers, to deprive any voter of so valuable a right as the exercise of the elective franchise.

#### FOREST PRESERVATION.

The Forestry problem has in late years become an important one ; and through natural causes and through the operations of some industries in the northern counties of the State, it is becoming every year more important and pressing. It is claimed by those who have given the subject attention that the preservation of the forest growth, especially in those parts of the Adirondack region which are unfit for profitable tillage, is a matter of serious concern to the material prosperity of the entire State. Valuable water-courses are largely dependent upon the preservation of the forest trees now standing, and a restoration of a new growth to tracts which have been left waste ; and this protection of rivers and streams is doubtless in this matter the chief consideration to the State at large. In addition, however, the northern counties are threatened at no distant day with a serious diminution, or even loss, not only of the profitable and rapidly growing industry of caring for the numerous persons who from within and without the State resort to their lakes and woods for health or pleasure, but also of the lumbering industry itself. It seems probable also that the owners of forest lands ought to be afforded ampler protection against trespassers who set fire to or cut or injure trees upon such owners' lands. Pursuant to the direction of the Legislature, the Comptroller in July last appointed a commission consisting of

Prof. C. S. Sargent, of Harvard University, the well-known expert in Arboriculture, D. Willis James of New York, William A. Poucher of Oswego, and Edward M. Shepard of Brooklyn, to report a plan of forest preservation. The report of this commission will be early transmitted to the Legislature by the Comptroller; and it is hoped that the Legislature will, as soon as practicable, give such careful consideration to the legislation recommended by that commission as it may seem to merit in view of the alleged serious importance of the subject.

#### FREEDOM OF WORSHIP.

The Constitution provides that "the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State to all mankind."

This constitutional guaranty of religious liberty should receive a liberal construction. It must be held to extend to the people in all their conditions and situations in life, and is a privilege so sacred that it should be jealously preserved from infraction, forfeiture or alienation.

It should be allowed to the inmates of our penal and reformatory institutions and institutions of every character receiving public aid, including houses of refuge and societies for the reformation of juvenile delinquents; and there should be secured to all these unfortunate classes the right of being visited by clergymen of the denomination to which they or, if minors, their parents belong, or whom they prefer, with permission to enjoy the religious services of such denomination to be had or administered according to its rules and discipline, and subject only to such reasonable regulations as may be prescribed by the

managers of such institutions or as may be established by law.

It is understood that such privileges have been for years freely accorded in most of such institutions throughout the State without the necessity of any special enactment to enforce the provisions of the Constitution, but it is claimed in some quarters that in some of them these rights and privileges are either denied in whole or in part or their enforcement evaded, or they are not permitted with that freedom or in the true spirit contemplated by the Constitution.

This accusation furnishes a proper subject for legislative inquiry, and if it is ascertained to be well founded it should be remedied by such wise and well-considered legislation as will effectually remove all just ground for complaint.

Any proper enactment having for its true purpose the enforcement of the inviolable right of religious liberty and freedom of worship to be enjoyed by persons of every creed and nationality according to the dictates of their own consciences and in accordance with their time honored customs and ceremonies, will receive prompt executive approval.

It has ever been the pride and boast of our State that its laws, public institutions and public officials were free from religious bigotry and intolerance, and its good name in that respect should not be tarnished at this late day by the omission to faithfully enforce those provisions of the Constitution adopted by our fathers, which were intended to protect every person in the enjoyment and benefits of the religious belief of his own choice, and to enable him to participate in the rites and sacraments of his own church wherever he may be placed.

## LEGISLATIVE COUNSEL.

One of the greatest evils incident to the hasty methods of modern legislation is the careless and imperfect manner in which bills are generally framed. Much needed legislation is annually lost because of the large number of measures which are left in the hands of the Executive at the adjournment of the Legislature, which are so defective that they cannot properly be approved, and when all opportunity for correction is gone. Many such measures, known as bills in the interest of reform and better government in the city of New York, as well as other important bills, failed last year because of serious defects of verbiage, which rendered their approval impossible, and the Legislature having adjourned, the errors were unable to be corrected. The record shows that during the legislative session of 1883 some forty-five bills were recalled from the executive chamber after their final passage, for necessary amendments and correction, while during the last session of 1884 there were fifty of such instances. This course of procedure occupies the time and engrosses the attention of the Legislature as well as of the Executive, and imposes upon the latter a very serious burden and responsibility, and all could be avoided if greater care and attention were devoted to the original preparation of the various measures proposed to be enacted.

These imperfections appear very generally in local legislation, and it is evident that the bills are usually framed by persons other than members, who possess little or no legislative experience, who are often unfamiliar with existing statutes and unacquainted with well settled legal phraseology.

It is suggested that provision be made by law for the appointment of a competent person to act as counsel to

the Legislature during its session, who shall receive a reasonable compensation to be paid by the State, whose duty it shall be, at the request of any member, to prepare any measure desired to be introduced in either house, to give legal advice in reference to proposed legislation to the members and to the various committees, and to inspect the various bills before their final passage in order to detect errors and imperfections, and to suggest the necessary amendments and generally to act as the legal adviser of the Legislature. This duty cannot well be performed by the Attorney-General, who is the law officer of the State, for the reason that his department is already overburdened with duties that fully engross his own time and that of his assistants.

Such appointee should be a person familiar with legislation, well versed in the law, of approved integrity and judgment, and it is believed that the services of such an official would prevent the passage of many crude and imperfect bills, shorten the sittings of the Legislature, prove in the end a saving to the State, and prevent the loss of many important and salutary measures at the close of each session.

#### THE RECENT AMENDMENT.

An important amendment to the Constitution has recently been adopted, to which your attention is especially directed.

It is an amendment to section 11 of article 8 and provides among other things that

“No county containing a city of over 100,000 inhabitants, or any such city, shall be allowed to become indebted for any purpose or in any manner to an amount which, including existing indebtedness, shall exceed ten per centum of the assessed valuation of the real estate of such county or city subject to

taxation, as it appeared by the assessment-rolls of said county or city on the last assessment for State or county taxes prior to the incurring of such indebtedness; and all indebtedness in excess of such limitation, except such as may exist, shall be absolutely void.

\*                      \*                      \*                      \*

The amount hereafter to be raised by tax for county or city purposes, in any county containing a city of over 100,000 inhabitants, or any such city of this State, in addition to providing for the principal and interest of existing debt, shall not in the aggregate exceed in any one year two per centum of the assessed valuation of the real and personal estate of such county or city."

This constitutional limitation upon the power to create debts is of vital significance, and a failure to observe its provisions becomes most disastrous in its consequences. It renders "absolutely void" all bonds or obligations of a city or county issued in violation of its terms. This provision must seriously affect the value of all such negotiable securities, as every purchaser is put upon inquiry as to the existence of the facts upon which their validity depends, and he purchases at his peril.

The amendment imposes upon the Legislature greater caution in the passage of local bills authorizing the incurring of indebtedness and requires care that the constitutional limitation shall not at any time be exceeded.

The theory of the amendment seems to be that it is wise that there should be some constitutional check upon the absolute and unrestricted power of taxation which has heretofore existed, and which experience has shown has led to serious abuses, and is liable to be unjustly and arbitrarily exercised in the hands of unfaithful or irresponsible officials, and that the power to contract debts to the

extent of ten per cent. of the entire valuation of cities or counties containing 100,000 inhabitants, and to collect annual taxes to the amount of two per cent. thereof is a sufficient and reasonable exercise of sovereign authority, which will furnish to such localities ample means for the needs of government, if economically and honestly expended, and at the same time provide an abundant safeguard against extravagance and corruption.

If the beneficial effects of this experiment shall become manifest after a proper trial, it may be advisable to consider the propriety of extending its provisions to the other cities and counties of the State.

The power of taxation is one of the highest attributes of government, and while the people will cheerfully bear its just burdens, they will welcome any reasonable restraint upon its reckless or improvident exercise.

Public officials sometimes fail to realize that the functions which they exercise are committed to them as a sacred trust, and that the money which they expend belongs to the people, and not to them.

They have the right to use it for the legitimate expenses of government, and for nothing else.

They have no moral or legal right to squander it or give it away. As has been well said upon this subject, by one of my predecessors in a similar communication, "Official generosity is official crime."

If it be asserted that the design of this constitutional safeguard can be frustrated or evaded by a fictitious increase of the valuation of the taxable property, it may be answered that no constitution or law exists that cannot be to some extent thwarted by unpunished corruption on the part of officials.

Constitutional restrictions and stringent laws may check or embarrass their efforts, but it cannot entirely prevent them.

The reliance of the people after all must be upon themselves, and in the honest enforcement of whatever guarantees are enacted for their benefit, and in the sure punishment of evil-doers who corruptly evade or tamper with them.

#### THE NEW CAPITOL.

The work upon this structure has progressed during the past year as rapidly and apparently as economically as was possible under the embarrassments against which the Commissioner had to contend

He has not been permitted to continue the work during the whole year.

He was obliged to suspend his operations from January 19, 1884, until March 22, 1884, by reason of the failure of the Legislature to make any appropriation, and by reason of the inadequacy of the one finally made he was unable to continue his full force of men longer than July eighteenth last, when he was obliged to discharge 456 men, and, by reason of the substantial exhaustion of such appropriation he was compelled, on October tenth last, to discharge 852 men, being essentially his entire force of workmen, and to discontinue the work from that date.

The policy which only provides for the continuance of so important a public work for a little over six months in the year is manifestly an unwise one and contrary to all correct business principles.

It is in the interest of true economy that the Capitol should be completed at the earliest practicable date.

The capacity and honesty of the Commissioner who

now has charge of the work is conceded on all hands, and the wisdom of the act concentrating the responsibility of its management in the hands of one competent builder has been abundantly vindicated by its two years' trial.

The fact should be recognized that it is no slight undertaking to organize a large force of reliable and skilled workmen, and, when so organized, it is hurtful to the State, as well as injustice to them and their families, that it should be constantly changed, or that the work should be delayed by repeated interruptions and long suspensions.

The State should conduct its business the same as any careful and prudent man would manage his own business.

For the details of the work accomplished during the past year, you are referred to the report of the Commissioner, containing a description of the same, which soon will be transmitted to you.

It seems almost needless to urge that it is highly important that the work should be pushed to its early finish as speedily as possible, and to that end such sum should be appropriated as the Commissioner can economically and judiciously expend, and as the Legislature in its discretion may determine to be proper.

It would greatly add to the appearance of the Capitol if the grounds or park in front of it could be suitably graded and beautified during the coming season, preparatory to the construction of the contemplated terraces and approaches. It is a much-needed improvement which ought to be commenced at once, as the citizens of Albany, as well as visitors generally, should not be compelled longer to endure the unsightly aspect which the Capitol Park presents.

## THE NEW ORLEANS EXPOSITION.

As is well known, there is now being held in the city of New Orleans the World's Industrial and Cotton Centennial Exposition, which is attracting universal attention. It was inaugurated under the joint auspices of the United States, the National Cotton Planters' Association, and the city of its location, and marks a new epoch in the history of this Republic, its influences promising to open up new avenues of commerce for our surplus products and manufactures, bringing this country into closer intimacy with the fifteen Spanish American States as well as other nations, and the establishment of more friendly relations between the citizens of the different States of our Union.

The objects sought to be accomplished are most worthy ones and deserving of generous assistance.

The Commissioner for this State represents that the amount appropriated to it by the general management for the purpose of enabling him to defray the necessary expenses of forwarding, collecting, arranging, and properly exhibiting the various products constituting our State display, including suitable reception-rooms or other apartments for the comfort and accommodation of our own citizens and others visiting the exposition, with proper attendants to explain our exhibits and otherwise to advance and subserve the interests of New York, is inadequate for such purposes, and he requests a State appropriation of \$5,000 in order that our State may be represented creditably, and its wants, productions and interests abundantly recognized and appreciated.

The application is commended to your favorable consideration, in the belief that such action will be taken as the dignity and importance of the Empire State requires.

## AGRICULTURAL INTERESTS.

The interests of the farmers of the State should receive whatever encouragement and fostering aid it is within the power of the Legislature legitimately to bestow.

Their farms pay a greater proportion of the taxes, according to their value, than any other species of property. The farmers as a class add the least to the criminal and charitable expenses of the localities where they reside, and they have never asked or received but little consideration at the hands of the State.

Of late years farming has become more scientific in its operations; old systems are giving place to more intelligent plans, and higher skill is being developed in all the methods of farm labor.

For the purpose of aiding the development of agricultural industry by experimentation, the State in 1882 very wisely purchased a farm near Geneva and established at public expense what is known as the New York Agricultural Experiment Station, which has ever since been in successful operation under honest and able management.

The enterprise is yet in its infancy, but it is rapidly developing its utility and acquiring the confidence of those practical farmers who have heretofore doubted its usefulness, and bids fair to greatly improve and benefit the whole farming interests of the State.

From a personal inspection of the station and careful inquiry into its management, I am satisfied of its great utility and confident that it deserves liberal encouragement at the hands of the Legislature and should receive such an appropriation as its board of control report that it needs for its proper support during the ensuing year.

Closely allied, if not strictly a part of the agricultural interests of the State, are its dairy interests.

These interests are greater than is generally understood, the amount of property invested in the business and the value of the dairy products of the State being evidently much under-estimated.

Last winter the Legislature passed an act (chapter 202, Laws of 1884) to prevent deception in sales of dairy products, and particularly to prevent the manufacture and sale of oleomargarine, and providing for the appointment of an official to be known as the New York State Dairy Commissioner to enforce the provisions of the law. The act went into effect on the first day of June last, and the Commissioner appointed under it has been diligently and zealously engaged in its execution. He reports that there have been twenty-eight convictions for violations of those sections of the statute relating to impure, unwholesome and adulterated milk, and that penalties to the amount of \$300 have been paid over to the State Treasurer, and that other suits and proceedings are now pending and undetermined.

He further reports that about sixty prosecutions have been instituted for the unlawful sale of artificial butter, and that by reason of such prosecution at least eighty per cent. of the illegal traffic which has heretofore existed has been broken up.

It is recommended that provision be made by law to enable the Dairy Commissioner to procure accurate statistics of the dairy interest throughout the entire State; and it is believed that such statistics will show it to be an immense industry, and one that is entitled to a far greater share of legislative attention than it has heretofore received.

## THE INTERESTS OF LABOR.

The problem of the production and proper distribution of wealth is as old as society itself.

The unprecedented increase in the wealth of the country which has come largely through the development of our great natural resources and the introduction of labor-saving machinery has presented many new phases of this problem.

It has caused large aggregations of capital in single hands and the growth of enterprises such as were not possible a few years ago.

With these have come great monopolies and many abuses of which the laboring people justly complain.

These abuses were not contemplated when the great body of our laws were enacted, and as to them our existing laws are defective.

Bitter controversies arise between labor and capital, which at present can only be settled by force or endurance, and in these controversies the weaker party must succumb.

Facilities have been afforded by law to enable capital to incorporate and combine for its protection; like facilities should be afforded for the organization of labor. The importation of pauper contract labor should be prevented and some system for the settlement of controversies between employers and employed, other and better than the remedy by strikes, should be devised.

It would seem that the difficulty could be greatly lessened by the enactment of laws establishing and regulating the arbitration of such controversies.

That the subject is one of the greatest importance is shown by the fact that notwithstanding this great increase

of wealth, there are now thousands of laboring people who are able and willing to work, standing idle while they and their families are denied the comforts and many of the necessities of life.

It is therefore evident that labor does not receive its fair proportion of the rewards which industry and honesty entitle it to share, and that misgovernment exists which should be inquired into and remedied.

#### GENERAL LEGISLATION.

It is represented that there exists a necessity for important amendments to the building laws of New York city and Brooklyn, and that there also should be framed a general building law to be applicable to the other important cities of the State.

It is evident that without the active assistance of modern architects and builders the Legislature cannot safely or intelligently prepare such measures; and it is a matter for serious reflection whether it is not advisable that a commission of disinterested experts skilled in the construction of buildings be authorized to be appointed for the purpose of reporting to the Legislature at the present or its next session proper laws for the construction, regulation and inspection of buildings in said cities and the better protection of life and property therein.

Under "the General Assignment Act of eighteen hundred and seventy-seven," whereby an insolvent debtor may make an assignment of his estate for the benefit of creditors, he is permitted to make such preferences among his creditors as he chooses. It has been demonstrated by experience that this power is subject to great abuse. It often leads to unjust favoritism, unfair discriminations,

and an inequitable distribution of the debtor's property, which, it would seem, it ought not to be the policy of the law to tolerate. It is a matter for careful consideration whether the ends of justice would not be promoted by an amendment to the General Assignment Act either limiting preferences to a portion of the assigned estate or forbidding them altogether except for wages of employees.

The present mode of executing criminals by hanging has come down to us from the dark ages, and it may well be questioned whether the science of the present day cannot provide a means for taking the life of such as are condemned to die in a less barbarous manner. I commend this suggestion to the consideration of the Legislature.

It is evident that there should be passed a distinct repealing act of those portions of the Revised Statutes and other general statutes, particularly specifying them, which have been superseded by the Code of Criminal Procedure and the Penal Code. A similar course was pursued after the adoption of the Code of Civil Procedure (see chapter 417, Laws of 1877), and the propriety of its observance at the present time is manifest.

It is also apparent that all the penal statutes providing that certain acts are misdemeanors ought to be embraced within the Penal Code. There are many laws on special subjects, providing that their violation shall be a misdemeanor, which are not included in that Code, which ought to be complete within itself and embrace every crime recognized by the law. When the Penal Code shall be thus perfected, the people should be made thoroughly familiar with its contents, as by reason of the recent changes in the criminal law, there is at present a lament-

able lack of knowledge among the general public as to what acts are criminal in their nature, and good citizens are liable to become violators of the law ignorantly and without evil intent; and a copy of such Code should be placed, at public expense, in every school district library in the State to the end that the people may know, and the children may be taught as to what acts are criminal in the eyes of the law. There are serious differences of opinion among the legal profession as to the wisdom of a general codification of the remaining law, but there is less as to the propriety of a simple revision of our statutory law. Since the Constitution of 1777, the following revisions have been made: Jones and Varick, 1789; Kent and Radcliff, 1801; Van Ness and Woodworth, 1813; the Revised Statutes, 1828 to 1830.

Since 1830 more general laws have been passed, and relating to more important and widely differing subjects, than during the period from 1777 to 1830. The statutes relating to a particular subject are in many cases numerous and inconsistent, as, for instance, the laws applicable to corporations, including religious corporations. All the laws applicable to and regulating State prisons, penitentiaries and county jails should be embraced within a single statute, instead of being scattered throughout various session laws, conflicting, and in a state of confusion as at present. It is unnecessary to multiply other illustrations. It would seem as though there could not be much objection to an intelligent revision of our statutes, but as the sentiment upon this subject is far from unanimous, it is submitted to the Legislature for its consideration without further comment.

The expediency of enacting greater restrictions upon the powers of officers of corporations is worthy of careful

deliberation. Certain corporations can be dissolved by the action of their directors without the consent and even against the protest of their stockholders. The propriety of imposing some limitation upon this power would seem to be beyond question.

The matter of railroad supervision constantly presents new and perplexing problems. The people expect and are entitled to demand from the railroad corporations the imposition of the lowest charges possible consistent with the actual cost of transportation and a reasonable profit, but they do not and should not desire such ruinous competition as has lately existed among certain railroads of the State, whereby passengers and freight are carried at rates much below actual cost, and which, if continued, must eventually engulf many of them in bankruptcy, and entail great losses upon an innocent class whose means—often trust funds—are invested in such enterprises. The matter is one demanding the earnest attention of the Legislature, and such provision should be made by law as to insure the protection of the patrons of the railroads and also the people whose money is invested in their securities

#### CONCLUSION.

We enter upon our respective duties to-day under circumstances which mark an important epoch in the history of our State and country. The year 1885 witnesses the peaceful transition of the general government from the political power of those who have controlled it since 1860 into the hands of the political party that prior to that date had administered it almost uninterruptedly since its foundation.

This significant result has not been produced by the

efforts of partisans alone, but greatly by the independent thought, conscience, and vote of the country.

Freedom from party trammels on the part of the people is the distinguishing feature of the political situation at the present time.

The people demand better government, purer methods and higher aims, and whatever party gives the best evidence of the honest fulfillment of such purposes will receive their confidence and approval.

It is to be hoped that a generous rivalry may exist among all departments of the State government, to so administer its affairs as to meet these just demands and merit this confidence and approval.

DAVID B. HILL.

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SPECIAL MESSAGE, RELATING TO THE DECEN-  
NIAL ENUMERATION OF THE INHABITANTS OF  
THE STATE.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,                    )  
ALBANY, *January* 19, 1885. }

*To the Legislature :*

I respectfully call your attention to the propriety of some legislation pertaining to the approaching census.

The Constitution provides that "an enumeration of the inhabitants of the State" shall be taken under the direction of the Legislature in the year 1855 and every tenth year thereafter.

Such enumeration, which should furnish the basis of representation of the several counties of the State in the

Legislature, was undoubtedly intended as the principal and primary, if not the sole object of such requirement.

The Legislature, in the passage of census laws, seems to have enlarged upon what was contemplated by the provisions of the Constitution, and, in addition thereto, provided for the collection of statistical information of various kinds, thereby enlarging the functions and increasing the duties of the enumerators, besides adding to the expenses and the time required for such work.

Since 1855 there have been created, by the State, various bureaus or departments, the duties of which, in whole or in part, require the collection of much statistical information, which embraces nearly all that is of positive value, and that, together with the information derived from the decennial census of the general government, would seem to furnish all the statistics which are really essential, and render it appropriate to limit the present census to the particular purpose specified in the Constitution.

The Secretary of State, in 1875, recommended that the gathering of such statistical information be omitted hereafter and that the decennial census be confined exclusively to an enumeration of the inhabitants of the State.

Such a course would be in the interest of economy, and, it is believed, would meet the approval of the people.

Aside from the amounts paid by the respective counties, the census of 1865 cost the State the sum of \$62,555.54, and that of 1875 cost the sum of \$128,067.90, while by confining the census to a simple enumeration of the inhabitants in the manner herein mentioned would not require from the State an expenditure of over \$10,000 or thereabouts.

Chapter 64 of the Laws of 1855 constitutes the principal statute under which the approaching census is to be con-

ducted, unless the same should be repealed or amended. That statute requires the census to be perfected in July.

It is admitted that it should be amended by requiring the census to be completed before May first, 1885, or, if that is objectionable, then that it be commenced and completed late in the fall, as there is manifestly great difficulty in perfecting an accurate enumeration, especially in cities, during the summer months.

The propriety of a change in this particular was mentioned by Hon. Chauncey M. Depew, late Secretary of State, in a special communication to the Legislature in January, 1865, and the suggestion is well worthy of adoption.

The expediency of vesting in the county clerks of the respective counties the performance of many of the duties relating to the census, including the appointment of enumerators, and the compilation of county returns in each county, is submitted to your consideration.

Whether such powers and duties could not be better exercised by such local officer, who is elected by the people of his county, is familiar with its territory and inhabitants, and could personally know and advise with most of the appointees, than by a State officer located at the Capitol of the State, having no such opportunity, knowledge or familiarity, is suggested as a question for your determination.

The taxpayers of the respective counties are obliged to pay for the services of the enumerators, and some voice in their selection might not be inappropriate.

In any event, it is clear that the act should be amended, or a distinct one passed, bringing the enumerators within the jurisdiction of the Civil Service Commissioners. Such appointees should be selected subject to the rules and

examinations prescribed for persons seeking similar public positions, as there should be no exception made in this branch of the public service.

Competency, efficiency and peculiar fitness should be the sole tests to be applied in the selection of such officers, and the rules and competitive examinations of the Civil Service Commission, if made applicable to them, would ensure such most desirable qualifications.

Your early attention to this subject is most earnestly invoked.

DAVID B. HILL.

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## RELATING TO APPLICATIONS FOR EXECUTIVE CLEMENCY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *January*, 1885. }

### RULES GOVERNING APPLICATIONS FOR PARDONS AND COMMUTATIONS OF SENTENCE.

1. All applications and accompanying documents should be written in a distinct hand, and include the following papers, information and statements, prepared as hereinafter described.

2. A certified copy of the record of conviction.

3. The full name of the person for whom clemency is asked, accurately spelled in Roman letters, for example: JOHN DOE—and the *alias* (if any) under which he may have been convicted, together with the names of those persons (if any) charged to have been connected with the same offense, and a statement as to whether the

applicant has been previously convicted, and, if so, of what offense, and the sentence therefor.

4. Applications must be indorsed with the name and post-office address (with street and number, if any) of the person with whom correspondence may be had concerning the pardon or commutation.

5. Applications will not be received which contain the names of more than one person for whom clemency is asked. Papers must be separately prepared in each individual case.

6. A brief statement of the grounds upon which the application is based—a schedule of papers, the facts to sustain the grounds in the form of a history of the case, a brief abstract of the evidence as taken upon a preliminary examination, or before a coroner's jury, if no trial was had, or upon the trial, and letters from responsible persons in the community where the crime was committed.

7. All facts relied upon to sustain any allegation as a ground for clemency (other than certificates of prison officials, which are only furnished at the request of the Governor), must be proved by affidavit.

8. In applications based upon the grounds of a mis-trial, or improper conviction, the allegations shall be sustained by such reasons and evidence as would have been a good ground for a new trial, and in applications based upon the ground of newly discovered evidence, the evidence must be such as would, in all probability, have produced an acquittal on a second trial; and where the court has overruled any motion for a new trial, based upon any of the foregoing grounds, such questions will not be reconsidered, except on the recommendation of the judge before whom such motion was heard.

9. No abstract of evidence as taken on a preliminary examination, or before a coroner's jury, or upon a trial, will be received or considered unless it be approved by the judge before whom a plea of guilty was entered, or who presided at the trial, or by the District Attorney of the county in which the conviction was had, with an indorsement that it is in all respects a fair statement of the case.

10. In cases other than capital, where, in the discretion of the Governor, it is necessary to file the whole evidence as taken upon the trial, it should be accompanied by a brief or abstract having reference to the original pages, and indorsed by one of the court officers as above required.

11. No application that has been refused will be reconsidered, unless substantial grounds for reopening the case are formally presented in writing in the manner above set forth.

12. Under the statutes of the State of New York, notice is not required to be given to court officers. In all instances such officers are notified from the Executive Chamber of the application, and are requested, among other things, to give such opinion on the merits of the application as they may deem proper.

13. By reason of the pressing engagements of the Governor during the session of the Legislature, and for thirty days thereafter, no application will be considered or decided during that period, unless it be one which, by reason of the nature of the circumstances surrounding it, cannot be delayed; but applications will be received as usual.

14. No applications will be considered in cases of sentences imposed by Courts of Special Sessions, or sentences to imprisonment for a term not exceeding one year, except upon the sole allegation of entire innocence of the offense

charged, and only on this ground will applications for clemency be considered in cases of inmates of Houses of Refuge and Reformatories.

15. No applications will be considered until all necessary inquiries are made and replies received.

16. Applications for clemency in capital cases must be presented at least two weeks prior to the date set for execution.

17. All applications will be considered in the order of their presentation, unless special reasons are given for precedence; and counsel will not be heard in their support unless the circumstances are such that it is a matter of imperative necessity, and requested by the Governor.

18. All applications and communications should be addressed to the Governor.

19. These rules will be waived only in those cases wherein their enforcement would work manifest injustice.

DAVID B. HILL.

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## INTERLOCUTORY DECISION IN THE MATTER OF A. V. DAVIDSON, SHERIFF, ETC.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, January 26, 1885. }

*In the Matter of the Charges against Alexander V. Davidson,  
Sheriff of the County of New York.*

The situation as I find it is this: The respondent, before answering, first moved before Governor Cleveland to dismiss the charges against him, upon the technical ground that they were not verified.

Argument was had upon such motion, and Governor Cleveland held, "as a matter of principle and precedent," that the charges should be verified by affidavit, but no formal order was entered.

The counsel against the sheriff, upon being notified of such decision, thereupon verified the charges, and the sheriff then filed his answer and accompanying documents.

The respondent's counsel then moved before me to dismiss the charges upon the merits, basing the application upon the charges, the accompanying evidence taken before the investigating committee, the sheriff's answer, as well as the records and documents submitted on either side.

Argument was had upon such motion by the sheriff's counsel, the counsel for the committee not appearing thereon, but referring me to their brief previously submitted to Governor Cleveland as their answer to the motion.

The proper decision of this motion involves an examination of the whole case.

The application is in the nature of a motion for a nonsuit at the circuit, and involves the entire merits.

If the motion should be denied, new or additional evidence may be submitted on either side, which would, or might involve a re-examination of the whole case.

My time is so fully occupied during the session of the Legislature, that I do not deem it my duty to examine the case in piecemeal.

The decision of this motion is, therefore, reserved until the final submission of the case.

I am not aware whether either party has any further evidence to offer, but if they have, I have concluded to hear it personally.

I therefore appoint the 31st day of January, 1885, at

10 o'clock A. M., as the time, and the Executive Chamber in the city of Albany as the place, when and where such evidence will be received.

If no further evidence is presented at that time, I shall regard the case as finally submitted, and proceed to decide it.

DAVID B. HILL.

CERTIFICATE OF THE ELECTION OF SENATOR  
EVARTS.

STATE OF NEW YORK,                    }  
EXECUTIVE CHAMBER.                }

This is to certify that in joint assembly of the Senate and Assembly of the State of New York, held at the Capitol, in the city of Albany, on Wednesday, January twenty-first, 1885, for the purpose of electing a Senator to represent the said State in the Senate of the United States of America, in the place and stead of Elbridge G. Lapham, whose term of office will expire on the fourth day of March next, William M. Evarts received a majority of all the votes cast for said office and was thereby elected United States Senator from the State of New York for the term of six years, from the fourth day of March, 1885.

Given under my hand and the great seal of the  
[L. S.] State, at the Capitol, in the city of Albany,  
this fourth day of February, A. D. 1885.

DAVID B. HILL.

By the Governor:

JOSEPH B. CARR,  
*Secretary of State.*

VETO, SENATE BILL, NOT PRINTED, TO INCREASE  
THE NUMBER OF NOTARIES PUBLIC IN CER-  
TAIN COUNTIES.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *February 10, 1885.* }

*To the Senate:*

Senate Bill, not printed, entitled "An act to provide for the appointment of an additional number of notaries public in the counties of Monroe and Onondaga," is herewith returned without approval.

This act authorizes and empowers the Governor to appoint, in and for each of the counties of Monroe and Onondaga, one hundred notaries public, in addition to the number now provided by law.

No sufficient reason appears why these particular counties should have proportionately a greater number of these officials than the other counties of the State.

It is claimed that the population of these two counties has greatly increased since the last State census, especially in the cities of Rochester and Syracuse, and that this fact justifies this unusual measure.

But the same argument may be made in behalf of every other city and county in which the population has largely increased, and the approval of this bill opens the way for special legislation in favor of all such localities.

Little inconvenience can result if these places shall be required to wait for the next census, which is expected to be taken this year, when their exact, instead of their estimated population can be ascertained, and their true pro-

portion of such officers awarded them, instead of making, at the present time, an arbitrary allowance as provided by this bill.

It would seem as though neither of these counties would suffer for want of an adequate number of these officials, as Monroe county already has 228 notaries, besides seven bank notaries, while Onondaga county has 214 notaries, besides fourteen bank notaries. In addition to these officials, I am informed that the city of Rochester alone has some 800 commissioners of deeds, who are authorized in that city to take affidavits and acknowledgments, while Syracuse has, or is entitled to have, under the laws of the State, whatever number of such last named officials its common council may appoint, unless the city has restricted itself by its own charter.

This bill cannot consistently be approved unless I am prepared to approve of similar bills for other parts of the State which are sure to follow.

Such a course would result in a general increase of such officials throughout the State.

It is clear that such general increase is neither desirable nor expedient, and a bill providing therefor was vetoed by Governor Robinson in 1877, by Governor Cornell in 1880 and by Governor Cleveland in 1883.

Their able and conclusive messages upon this subject are respectfully referred to the consideration of the Legislature.

I have heard no good argument advanced which convinces me that I should take any different course from the one pursued by them.

DAVID B. HILL.

COMMUNICATION TO PROFESSOR LAW RELATING  
TO CONTAGIOUS DISEASE AMONG CATTLE.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,  
ALBANY, February 17, 1885. }

To Professor JAMES LAW, *Cornell University, Ithaca, N. Y. :*

Complaint reaches me that some contagious disease among cattle has appeared in the vicinity of Poughkeepsie, at or near New Hackensack. Will you please visit the place immediately and report to me what the disease is, and what steps are necessary to protect the public interest? Answer.

(By telegraph.)

DAVID B. HILL.

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THE CIVIL SERVICE—CLASSIFICATION OF CHIEF  
CLERK, BUREAU OF LABOR STATISTICS.

STATE OF NEW YORK,  
OFFICE OF CIVIL SERVICE COMMISSION. }

The Chief Clerk of the Bureau of Labor Statistics, in consideration of the fact that he performs the functions of a deputy in the absence of the Superintendent, and that he occupies a confidential relation to the head of the office, and in compliance with the request of his Excellency the Governor, shall be included in Schedule A under the Civil Service Rules; and subdivision 2 of class I under Rule V is amended by adding at the end thereof "the Chief Clerk of the Bureau of Labor Statistics."

Adopted February 17, 1885.

CLARENCE B. ANGLE, *Secretary.*

Approved February 21, 1885.

DAVID B. HILL, *Governor.*

IN THE MATTER OF EDMUND FITZGERALD,  
MAYOR, ETC.—DECISION ON MOTION TO DIS-  
MISS CHARGES.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *March 3, 1885.* }*In the Matter of the Charges preferred against Edmund  
Fitzgerald, Mayor of the City of Troy.*

The respondent moves to dismiss the charges presented against him by certain citizens of Troy, upon the ground that such charges do not make out a proper or sufficient case for the exercise of the power of removal vested in the executive.

For the purposes of such motion the charges are to be taken as true.

They allege, in substance, that the respondent, as mayor of the city, conspired with one Bridgeman forcibly to dispossess Benjamin H. Hall, the acting or *de facto* chamberlain of said city, who was then in the peaceable possession of his office, of the rooms in the City Hall, which had been assigned to him by the city government, and of the books, papers, vouchers, cash and other valuables contained in said rooms and in the vault therein, then in the said Hall's care and custody; and also forcibly to put and maintain said Bridgeman in possession of said rooms, office and property, and that in furtherance of said conspiracy the respondent, as such mayor, directed the superintendent of the police of said city, with the aid of the policemen under his control, to forcibly dispossess said acting chamberlain of said rooms and property, and to put and maintain the

said Bridgeman in possession thereof; and that in pursuance of such conspiracy and such directions the said Bridgeman, with the knowledge, assent and co-operation of said mayor, and with the aid of said police, did violently eject the said chamberlain from his office and forcibly took possession thereof and of the contents therein, and excluded the said Hall therefrom and maintained himself in possession thereof.

The foregoing is charged to have been done in disregard of law and of the peace and good order of said city, and of his duties as such mayor.

The question now presented is whether upon such undisputed facts there is a grievance or offense presented of so serious and important a nature as may require Executive interference, by the removal of the offender. The motion can be readily disposed of, as I entertain no doubt of my duty in the premises. The acts specifically charged to have been done are alleged to have been committed in pursuance of a "conspiracy." They constitute a crime under the statute. (*Sec. 168 of Penal Code.*)

It is clearly no light or trifling offense to conspire to forcibly dispossess a public official from his office. The charge being that of a "conspiracy," a criminal intent is deemed to be alleged. (*People v. Powell*, 63 N. Y. R., 92.) Under such circumstances the accusation becomes a most serious one, and presents a clear case of malfeasance in office. Such acts as are here charged are not only subversive of the good order and peace of the community, but they are criminal in their character and cannot safely be overlooked. They exhibit an utter lack of appreciation on the part of the accused official of the responsibilities, duties and dignity of his office.

The law provides a pacific mode of obtaining the possession of public offices, and it is the duty of all citizens, and especially officials, to respect and observe the law, and not attempt by mob violence or other forcible means, and by the unauthorized use of the police or by the exercise of unwarranted power, to forcibly oust a public officer from the position which he is peacefully holding.

It becomes unnecessary upon this motion to consider the question as to who is the *de jure* chamberlain of Troy. That point is not involved now, and need not be passed upon.

The facts set up in the respondent's answer, which are not admitted by the prosecution, must also be disregarded upon this application.

It is sufficient that I am satisfied that if the charges presented shall be proved against the respondent as broadly as they are made, and he is shown to be guilty of the offense of conspiracy alleged against him, with all that is implied by such an accusation, there is a case established which may justify, if not imperatively demand, Executive interference, and hence it follows that this summary motion to dismiss must be denied. Whether such a case shall be made out, must depend upon the evidence to be produced before a commissioner hereafter to be appointed.

DAVID B. HILL.

DECISION IN THE MATTER OF A. V. DAVIDSON,  
SHERIFF.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *March 3, 1885.* }

*In the Matter of the Charges Preferred against Alexander V.  
Davidson, Sheriff of the County of New York.*

The charges against the sheriff, upon which his removal is sought, were presented to the grand jury of New York, who gave them an exhaustive investigation. The entire field of his official conduct was before them for inquiry. All the witnesses having knowledge upon the subject were examined, and the sheriff's books and papers were produced and put in evidence. Nothing has been shown to impeach the thoroughness or good faith of that judicial inquiry, conducted with the sanction of the law. It resulted in a single indictment for a criminal offense upon a charge which would constitute malfeasance in office, if established. All other charges not embraced in the one indictment were disregarded, presumably because the proofs adduced were insufficient to sustain them. Upon that indictment the sheriff has been tried and acquitted.

While that judgment may not be binding and conclusive, in determining the proper disposition to be made of these charges, yet it would seem to be entitled to great weight and respect. This proceeding is in the nature of a judicial investigation in another form of the same accusations, seeking the imposition of one of the highest penalties known to the law—removal from public office for official misconduct. These charges, if they had been substan-

tiated, constitute offenses for which the sheriff could have been indicted, tried and convicted. Having been patiently investigated by a grand jury, and all of them having been dismissed except those embraced in one indictment, and after a trial by jury, in accordance with the constitutional methods provided for the protection of the citizen, the sheriff having been adjudged innocent of such offenses, if such proceedings are not to be deemed a technical and absolute bar to the further prosecution of these charges, nevertheless the clearest and most convincing proof should be required of his guilt, before reaching a conclusion at variance with them.

An examination of the testimony fails to disclose proofs of this character. A removal of a public officer under such circumstances would indeed be regarded as a harsh and arbitrary exercise of an extraordinary power.

The indictment and the trial were the outcome of the judicial investigation had before the grand jury, and it has not been disputed but that such proceedings were honestly and fairly conducted, without any collusion or favor. The certified record of that trial produced and put in evidence before me shows that the people were ably represented by the District Attorney and Mr. G. H. Adams, while the sheriff was defended by Hon. William M. Evarts, Mr. Joseph H. Choate and others, and the unsullied reputation of the counsel on either side repels all suggestions of favoritism or collusion. It is evident that both the prosecution and the defense were conducted on their merits and the prosecution failed because the evidence did not satisfactorily establish any guilty knowledge or intent on the part of the sheriff, in connection with the irregularities in his office charged against him.

No oral testimony has been introduced before me, but by the stipulation of the attorneys on either side, the printed testimony taken by the legislative investigating committee, as well as the testimony taken before the grand jury, has been presented and regarded in evidence. Together they constitute over two thousand pages of evidence, which I have diligently examined during the period that I have been able to give to the case, which has necessarily been brief, owing to the fact that the Legislature is in session and my time is greatly occupied in attention to its work.

The case shows, in reference to the overcharges in the sheriff's bills which were presented to the finance department of the city and paid, that it is conceded that during the year 1883, which was the first year of the sheriff's administration, he charged and received for the transportation of criminals from the city prison to the courts of Oyer and Terminer and General Sessions, and reporting convictions to the Secretary of State, the sum of over \$6,000 in excess of the compensation or fees allowed by law.

If these overcharges had been knowingly or intentionally made, they would furnish just grounds for his immediate removal. But the testimony discloses, what is practically undisputed, that they were not so made, but that the bills containing them were prepared by his subordinates, in accordance with a system which had been adopted by his predecessors in office, and which was of long standing, and that owing to the multiplicity of his duties, the sheriff did not have, and could not very well have had, personal knowledge of the matter contained in the bills; that they were reported to him by his subordinates to be true and correct, and that he certified to and verified them upon

the faith of such representations, and that subsequently, when his attention was called to the subject by the proceedings of the investigating committee, he promptly requested the corporation counsel to investigate the matter and determine the extent of the illegal charges, and when ascertained he immediately proffered restitution to the city treasury, and the amount, with interest, was retained by the Comptroller out of the moneys due him for services subsequently rendered; and since then, as further indicating his good faith, and in order to avoid any technical question as to whether said moneys had been properly or legally retained by the Comptroller, he has executed and delivered a valid release to the city of such moneys, and the same have been duly passed over or transferred to its general fund. It also appears that upon the discovery of these errors he promptly suspended the subordinate by whose carelessness or fraudulent conduct the same were occasioned, and reformed the administration of his office in this respect, and no further grounds of complaint of this character are shown to exist.

There does not seem to have been any disposition on his part to persist in any course of wrong-doing, and in the criminal proceedings against him, the People failed to satisfactorily establish the existence of any corrupt or criminal intent upon his part in the matter of any overcharges. It is not deemed necessary in this decision to review the other specifications in the charges against the sheriff.

It is sufficient to say that in reference to some of them the evidence is sharply conflicting at every material point. Witnesses apparently reputable and entitled to credit and having personal knowledge of the transactions of which they speak, refute all the substantial allegations of criminal

or improper conduct on the part of the respondent. Some of the witnesses relied upon to sustain the charges, seem to be prejudiced against him and to entertain ill-will towards him or his subordinates, being discharged employes and eccentric inmates of the jail, who either fancy that their keepers are responsible for their confinement or are restive or dissatisfied under any system of prison discipline.

In such cases, an examination of the witnesses in the presence of the tribunal which is to pass upon their competency and credibility has always been regarded as of the first importance in determining the value of their evidence.

This test could not be applied in this proceeding. I have been obliged to weigh their testimony in the light of what experience has shown is always developed upon investigations of jails, prisons, asylums and other public institutions, where people are confined against their will.

The evidence may be said to satisfactorily establish some negligence and some minor abuses during the earlier part of the respondent's administration, but not any intentional wrong. That negligence and those abuses are not shown to still exist. An opportunity was expressly afforded the very able and assiduous counsel of the committee to offer evidence of continued irregularities in the office, if any existed, and no such proof has been submitted.

It is believed that the office is now honestly conducted and its affairs administered with reasonable satisfaction to the public. An entire absence of criticism is not to be expected.

It would not be strange or surprising if there were some complaints in regard to the conduct of any public office, the duties of which are so important, varied and

multifarious as that of the office of sheriff of a great city like New York, which duties must necessarily be performed by a large number of deputies and not by the sheriff personally, and where business is daily transacted with hundreds if not thousands of people.

It should be borne in mind, however, that the present charges against the respondent were not presented by the bar association of New York or in behalf of the legal profession, with whom the sheriff's office is constantly brought into close business intimacy. There have been no formal complaints whatever from that source. The charges originated in the Legislature and were investigated by that body without any specific accusations being first presented from any bar association, committee, or other responsible source, and mainly with a view of ascertaining what reform legislation, if any, was required. That legislation was enacted (*chap. 297 of the Laws of 1884*) and there is no claim that the respondent has not complied with its provisions.

I am convinced that if any misconduct or abuse now exists in the sheriff's office, after the light which has been thrown about it and the attention which has been attracted to it by the legislative investigation, it would be immediately exposed from some quarter and could readily be shown.

Assurance has been given that all just complaints, whenever made, are and will be promptly remedied by the sheriff, and if any fresh cause of abuse or irregularity shall hereafter arise, which is not immediately corrected and satisfactorily explained, charges based thereon will be quickly entertained by the Executive and diligently investigated, and the relief afforded by the laws vigorously

applied by the prompt exercise of the power of removal vested in him.

While that power is not to be invoked against a public officer for every trivial error or slight offense or neglect in the absence of fraudulent or corrupt intent, still, even such actions if repeated and persisted in, become serious and inexcusable, and may present sufficient grounds for Executive interference.

Governor Robinson in his decision of the charges against Register Loew, of New York, in 1879, in suspending such charges and in refusing to remove him, very pertinently said: "The power of removal from office conferred upon the Governor by the Constitution and laws is never to be exercised capriciously. It is intended simply to place in the hands of the Governor the means by which he can discharge the duty imposed upon him of taking care that the laws be faithfully executed. The propriety of exercising the power in any case should be considered upon a higher plane than that of personal or partisan interests. If the object for which it is given can be as well attained without a removal, it is far better."

He further said: "The register has voluntarily given to me, both verbally and in writing, explicit assurances that there shall not be, henceforth, any disobedience whatever of the requirements of law in the administration of his office. \* \* \* He has placed no obstructions in the way of the committee who sought to examine into the affairs of his office. He showed no intention of placing himself in hostility to the law. On the contrary, he showed, both by his word and his action, a desire to maintain it. And although, in a court of law, he might be held responsible for his neglect to compare the schedule of charges which

came from his predecessors, with the provisions of the statute, it is very evident, from all the facts in the case, that it was a matter of mere neglect and not an intentional wrong. I have no reason to doubt, in the light of all the facts, that the register will continue to administer his office in strict accordance with the law, and that I shall better discharge the great duty imposed upon me by retaining him than I could hope to do by removing him and appointing a new man in his place."

These remarks are peculiarly applicable and appropriate to the facts of the present case.

It should be remembered that the power of removal is not to be exercised for punishment, but to insure the due discharge of public duties in the future. The courts and not the Executive are vested with the sole power of punishment.

It may be further observed that, as the respondent's term of office will expire in less than ten months, and as neither he nor his appointed successor will or would be eligible to a re-election, and as a change at the present time imposes the task of the selection of a competent person, willing to accept the responsibilities of the position for so short a period—a matter of itself not free from difficulty and embarrassment—and as such change may possibly involve the appointment of some person unfamiliar with the duties of the office and create much confusion and derangement of the public business, all these facts present considerations which, while they should not control the decision to be made in these proceedings, are still entitled to some weight upon the question of the propriety of the exercise of a discretionary power.

In view, therefore, of the fact that the evidence pro-

duced to sustain these charges has failed to establish any corrupt or criminal intent, or any gross or inexcusable negligence on the part of the sheriff, and by reason of the unsatisfactory character of some of the testimony, and the further fact that mainly these same accusations have been investigated in the criminal courts which had complete jurisdiction thereof, and that he has been acquitted and discharged from all further prosecution on account of the same, and that he has made full restitution to the city of the moneys wrongfully obtained by the action of his subordinates, and has reformed the administration of his office in the respects heretofore justly complained of, and in consideration of all the other facts and circumstances of the case to which reference has been made, I am convinced that my duty to the public and to the accused is best discharged by a dismissal of these proceedings, which is hereby ordered.

DAVID B. HILL.

APPOINTMENT OF A COMMISSIONER IN THE  
MATTER OF E. FITZGERALD, MAYOR OF TROY.

STATE OF NEW YORK,  
EXECUTIVE CHAMBER.

*In the Matter of the Charges against Edmund Fitzgerald, Mayor  
of the City of Troy.*

Charges having been preferred against Edmund Fitzgerald, mayor of the city of Troy, by William Kemp and others, citizens of said city, and a copy thereof having been served upon the said mayor, with notice to answer the same within ten days thereafter, and a written answer

thereto having been made and received by me ; I do hereby appoint Rastus S. Ransom, of the city of New York, commissioner to take the testimony and the examination of witnesses as to the truth of said charges, and to report the same to me, and also the material facts which he deems to be established by the evidence.

And I direct the Attorney General to conduct the inquiry and examination before the said commissioner, first giving to the said Edmund Fitzgerald, or his counsel, at least eight days' notice in writing of the time and place when and where he will proceed to the examination of witnesses before said commissioner.

It is hereby further ordered that said examination before such commissioner proceed with all convenient speed.

Given under my hand and the privy seal of the  
State, at the Capitol in the city of Albany, this  
[L. s.] eleventh day of March, A. D. one thousand  
eight hundred and eighty-five.

DAVID B. HILL.

By the Governor :

WILLIAM G. RICE,  
*Private Secretary.*

VETO, SENATE BILL No. 40, INCREASING THE  
NUMBER OF AQUEDUCT COMMISSIONERS FOR  
NEW YORK.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *March 12, 1885.* }

*To the Senate :*

Senate bill No. 40, entitled "An act to amend chapter four hundred and ninety of the Laws of eighteen hundred and eighty-three, entitled 'An act to provide new reservoirs, dams, and a new aqueduct with the appurtenances thereto, for the purpose of supplying the city of New York with an increased supply of pure and wholesome water,'" is herewith returned without approval.

This bill proposes to add the president of the board of fire commissioners to the aqueduct commissioners already in office.

The aqueduct commission now consists of the mayor, the comptroller, the commissioner of public works, and three private citizens, as provided by chapter 490 of the Laws of 1883.

When the measure for the construction of the aqueduct was first contemplated, there existed much diversity of opinion in reference to the proper commission of officials who should be charged with the work. Such disagreement existed both in and out of the Legislature, and for some time prevented the passage of a satisfactory act. Finally, after much controversy and discussion, which nearly imperiled the passage of any measure whatever, it was agreed, as a matter of compromise between all conflicting interests, including the authorities of New York

city on the one side, and the citizens representing the taxpayers on the other, that the commission should consist of three officials, namely, the mayor, comptroller and commissioner of public works and three citizens and taxpayers named in the bill, and thereupon the Legislature, regarding favorably such adjustment of conflicting views, passed the act providing for such a commission. That seemed to be a proper and equitable division of powers and responsibility, and appeared to give general satisfaction. There has been no complaint since then that such commission was improperly constituted, or that, owing to any disagreements or impropriety on the part of its present members, there has been created any necessity for any addition.

This bill proposes to destroy the equilibrium now existing between the office-holding and the tax-paying element, and to give representation to another department of the city government, having no proper connection with or relation to the construction of the aqueduct.

No good reason appears to be advanced why the board of fire commissioners should be represented, any more than the board of health, the police commissioners, or any of the other many departments of that city. It is true that the fire department is interested in the proper distribution of water within the city, but with this distribution the aqueduct commission has nothing whatever to do, its duties being confined solely to the construction of the aqueduct by which the water is to be brought to the city, and thereafter the water, and all the means for its distribution, are under the control and management of the department of public works.

The bill certainly establishes a bad precedent, and would

undoubtedly furnish the pretext for propositions to add other departments another year.

The departments already represented on the commission are amply sufficient to protect the interests of the city government, if the officers honestly do their duty, and no other officeholders are demanded upon it for any good or laudable purpose.

A bill of this same purport was not approved by Governor Cleveland last year, who said in his memorandum of disapproval: "The board, as now constituted, seem to have the work well in hand, and I can see no good purpose to be gained by an addition to their number."

The situation has not materially changed since then, and it could hardly have been expected that this bill would be approved, under such circumstances

I can discover no argument for the passage of this bill, except to provide an additional place for another official. The public interests do not seem to have been consulted in its passage, and I am clear that they will not be subserved if it becomes a law, or be injured if it fails.

DAVID B. HILL.

MEMORANDUM FILED WITH ASSEMBLY BILL,  
NOT PRINTED, RELATING TO THE POLICE  
FORCE OF TROY. APPROVED.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *March 13, 1885.* }

*Memorandum filed with Assembly bill, not printed, entitled "An act to increase the police force of the city of Troy and reorganize the same, and reorganize the board of police commissioners of said city." Approved.*

The Legislature in the exercise of its discretion has seen fit to enact this measure. It passed the Senate by a unanimous vote, and with but one dissenting voice in the Assembly. Where such unanimity of sentiment is manifested in favor of a public measure, the Executive would hardly be justified in withholding his approval unless the bill is clearly unconstitutional, or it conclusively appears that some vital principle or sound theory of public policy has been violated. Where such elements are lacking it cannot be expected that the Executive will attempt to review the discretion vested in the Legislature. If this bill appeared to be a partisan measure, aimed by one political party against another, whereby either sought to gain some unfair advantages, it would be promptly disapproved. I should not sanction any such methods of political procedure. But such does not seem to be the tenor of the present bill or its avowed object.

It was substantially conceded by those who appeared before me in behalf of the opponents of the bill, that it was desired by nearly all of the people of Troy, without

distinction of party. No remonstrances have been presented to me against it. The public sentiment of that city, so far as it has found expression and can be ascertained, appears to favor the measure. If there really exists a large element or faction, who are antagonistic to it, certainly it has not been made apparent. Under such circumstances, the duty of the Executive is plain: to permit the people of Troy to carry out their wishes as expressed in the unanimous action of the Legislature, and not attempt to thwart them by adverse interference.

In this view the mere propriety or expediency of the bill is not properly to be considered, and there remain but two constitutional questions to be passed upon.

Upon the public hearing which was given to the friends and opponents of this act, it was claimed by the counsel for the opposition that the bill is unconstitutional upon two grounds:

*First.* Because it requires that in the selection of the four police commissioners for said city, each half of the board shall be of opposite political parties; and

*Second.* Because the president of the common council, who is designated as the local official or authority, to make such selection, is not one of the "authorities," of said city, within the meaning of section 2 of article 10 of the Constitution. No direct decisions were cited in support of either of these propositions.

The provision requiring each half of the police board to be taken from opposite political parties is not a new one to the statute books of this State. It exists in the charters of a large number of cities. Its manifest fairness and propriety are unquestioned, and its constitutionality

has never been seriously disputed. After having existed in so many different charters for so long a period of years, and there being no precise clause in the Constitution which can be pointed out as being violated in its enactment, and in all the controversies which have heretofore arisen in reference to such non-partisan police boards throughout the State, there having been no decision of the courts adverse to its legality, it would be clearly improper to refuse approval of the bill upon any such uncertain and chimerical ground.

There is more force or at least plausibility to the other objection, but I am satisfied that this is also untenable. The Constitution provides that all city officers, such as police commissioners, shall either be elected by the electors of such cities or "appointed by such authorities thereof, as the Legislature shall designate for that purpose." The president of the common council is elected by the council from one of their number, and is vested with certain duties pertaining to city affairs. He is the presiding officer or head of the legislative branch of the city government, and represents that body to a certain extent. He is an officer of the city and represents in some particulars a portion or division of the municipality, and is one of the "authorities" of the city, who may be designated by the Legislature to appoint minor officers, as much as the comptroller or any other city official or body, aside from the council itself. The word "authorities" does not necessarily mean more than one person, as it is conceded that the mayor would be regarded as constituting the "authorities" of the city, or one of them, within the meaning of this clause. The Constitution is to have a liberal, and not strained or narrow con-

struction. The object of the clause in question was to provide that some local officer or authority, as distinguished from the Governor and the Legislature or other outside power, should make local appointments. That object is accomplished when the appointing power is vested by the Legislature in the head of the common council, who has been selected by the legislative branch of the city government as their especial local representative. In view of this plain reasoning, and in the absence of adverse legal authority, it would be presumptuous in the Executive to assert that this clause in the present bill is obnoxious to the Constitution.

Assent to a proper measure, desired by a vast majority of the people of a city, should not be refused unless its unconstitutionality is very apparent. It is not so apparent in this instance, and the approval of the bill should, therefore, follow, unless it is in other respects grossly objectionable.

The bill provides for an entire reorganization of the police department of Troy, an increase of the police force, and for other changes said to be demanded by the public interests. The wisdom or advisability of these provisions has been passed upon by the Legislature. The maintenance of a strictly non-partisan board is directed and guaranteed so far as it reasonably can be. It is difficult to see how one political party is to gain any benefit or advantage over the other by the effect or operation of this bill. The officials who are retired by this measure belong, as I am informed, one-half to each political party, and if it is unjust to one party, or set of officials, it is equally so to the other. Personal considerations, or the desire for place of a few individuals, cannot be permitted to be urged

against a public measure like this, seemingly demanded by the best public sentiment of Troy. It is believed that no injustice will, in fact, be done or permitted by the alleged arbitrary provisions of the bill, appertaining to the entire reorganization of the police force. Assurances have been given that the faithful and deserving officers will be retained, or rather reinstated, and that no harsh proceedings will be attempted or tolerated.

It is claimed and represented to me by the best citizens of all parties in Troy that the effect of this bill will be salutary and beneficial to that city, and tend to reform existing abuses of which they justly complain, and relying upon such assurances, and in the hope that it will be the means of giving to that municipality a purer and better government, I have concluded to permit it to become a law.

DAVID B. HILL.

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VETO, ASSEMBLY BILL, NOT PRINTED, RELATING  
TO A SCHOOL DISTRICT IN PALMYRA.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *March* 13, 1885. }

*To the Assembly :*

Assembly bill, not printed, entitled "An Act to exempt school district number one, in the town of Palmyra, from the provisions of chapter 555 of the Laws of 1864, so far as it prohibits any supervisor from being eligible to the office of school trustee, or a member of any board of education in his town," is herewith returned, without approval.

This bill, as its title indicates, proposes to exempt a single

school district in the county of Wayne, from the provisions of the general law which prohibits any supervisor from being eligible to the office of school trustee or member of any board of education in his town.

The circumstances giving rise to this measure are, that a very estimable citizen is supervisor of the town of Palmyra, and has been or is proposed to be made a member of a board of education in that town, and that the citizens or some of them are desirous of having him hold both offices. It must be conceded that this is special legislation in its most objectionable form. For reasons which were deemed valid and unanswerable, the Legislature passed a general act (chap. 555 of the Laws of 1864) prohibiting any supervisor from being also a trustee or member of any board of education. The theory of that act undoubtedly was that the duties of the respective offices were inconsistent with each other, or might, in many instances, conflict, and hence should be discharged by different persons.

It may have been regarded as sound public policy that no person should hold two distinct offices; but whatever reasons may have existed for its enactment, it was deliberately placed upon the statute books and has ever since remained a general law of the State. If its prohibitory provisions are improper or unwise, they should be repealed.

There is no good reason why one town in the State by a special act should be excepted from the operation of this general law. The law should be uniform upon this subject throughout the whole State, and such legislation as this, which is special and of very doubtful expediency, should not be encouraged.

DAVID B. HILL.

VETO, ASSEMBLY BILL No. 204, TO ESTABLISH  
TOWN AUDITORS IN HORNELLSVILLE.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *March 19, 1885.* }*To the Assembly:*

Assembly bill, printed, No. 204, entitled "An act creating a board of town auditors in and for the town of Hornellsville, in the county of Steuben, and to prescribe their powers and duties," is herewith returned without approval.

This bill illustrates the fickleness of legislation upon the subject of the establishment of tribunals for the auditing of town accounts, and makes manifest the necessity of determining upon and adhering to some settled policy.

A brief history of previous legislation upon the subject may not be inappropriate.

From the year 1813 until the year 1875 the supervisor and town clerk, together with the justices of the peace, constituted a town board for the auditing of accounts in each town in the State. That system, which was continued in existence for so many years, seemed to work well and gave general satisfaction. But, in 1875, the State entered upon a new experiment, and passed an act providing for the election of three persons in each town, to constitute a separate board of town auditors. Since that time there has existed more or less dissatisfaction with that system, and confusion and inconsistency in the legislation has resulted therefrom. The Session Laws are filled with conflicting and special legislation upon the subject.

In two years thereafter the Legislature, by a special

act, provided that the counties of Suffolk (except the town of Islip), Onondaga, Saratoga (except the town of Saratoga Springs), Ontario, Yates, Rensselaer, Genesee, .. Schenectady, Monroe, Livingston, Otsego, Schoharie (except the town of Schoharie), Niagara and Orleans should be exempted from the operation of said act of 1875. In 1878, by another special act, thirteen more counties were also exempted. In 1879 by a like act, seven additional counties or parts of counties were likewise exempted. By another act of that same year, two towns in Chenango county were exempted. In 1880 the county of Oswego (excepting three towns), was exempted, and by three other distinct special acts passed that same year, several towns in other counties were also exempted. Then in 1881 another act was passed to exempt the counties of Chemung and Greene, but it was very properly vetoed by Governor Cornell, who pertinently said: "The legislation in reference to town auditors affords an apt illustration of the facility with which the Session Laws are filled with unimportant enactments. The office of town auditor was created by chapter 180 of the Laws of 1875. That law was amended once in 1877, twice in 1878, and three times in 1879, and in 1880 no less than four different amendments of the law were enacted. These several amendments have exempted thirty-seven counties from the operations of the law, and two bills now awaiting Executive action make exemptions in five other counties, thus leaving but eighteen counties subject to the law. It is manifest from this continual demand for exemption that the creation of the office of town auditor has not accomplished beneficial results; and, judging the future by the past, it may be predicted that county after county will be exempted by

special acts, until the original statute is practically disposed of. It is, therefore, respectfully submitted that the Legislature should at once consider the propriety of repealing the law of 1875, and thus avoid the necessity of further trifling with this subject."

Finally, in 1883, the Legislature repealed the act of 1875, thus returning to the old system which had existed previously to that date, but in the very repealing act, strange as it would seem, permitted four towns in Clinton county, one town in Madison county and three towns in Warren county to be excepted from such repealing act. The bad precedent thus established by such exception was followed up a month later by also excepting all of the towns in the county of Essex. Then follows the present bill proposing to re-establish a separate board of town auditors for a single town in the county of Steuben.

It is respectfully submitted that this variable and inconsistent special legislation should cease. The State should adopt some system for the proper administration of town affairs and then firmly adhere to it. The law should not be changed every year or two to suit the caprice or supposed wants of particular localities.

It may well be urged that there should exist one general law, providing for a uniform board or system for the auditing of town accounts in each of the towns of the State. The town offices should be substantially the same throughout the State, and a stranger should not be obliged to consult all the Session Laws to ascertain what particular offices exist in a certain town. It is perhaps unnecessary to state that I have no preferences or prejudices for or against either of the two systems of auditing town accounts, and will be satisfied with which ever the Legislature sees fit to adopt. But it is insisted

that it is manifestly the duty of the Legislature to adhere to whatever plan shall be selected, and not to constantly alter it by special acts whenever a town fancies that it desires a change.

If the present bill shall become a law, I am informed that other bills of like character for other towns are to be presented, and the flood-gates of special legislation will be opened. There are over nine hundred towns in the State, and it is unwise and objectionable to encourage the passage of special acts providing for different town offices in each of the counties in the State, and in parts of the same counties. The law of 1883 authorizes, or rather permits (with the few exceptions mentioned, and perhaps one or two others), the existence of a uniform auditing board in each town of the State, consisting of the supervisor, town clerk and the justices of the peace, and if this system is to be changed, it should be done by a general act applicable to the whole State.

If, for any purpose, it is not desirable that there should exist uniformity in the official boards who are to audit town accounts, nevertheless this can be accomplished by a general act better than by special legislation. A proper general act can be framed permitting the electors of each town to determine by a vote whether they desire a distinct and separate auditing board similar to that provided by the act of 1875, or the one at present existing, and providing for the adoption and maintenance of whichever system the majority may select. Such a measure would enable the electors of any town to determine for themselves what system they desire, without any intervention on the part of the Legislature, and the objection of special legislation would be avoided.

The propriety of the passage of such a general act is commended to your consideration.

The present bill, however, which is a special act providing in effect for excepting the town of Hornellsville from the repealing act of 1883, is clearly objectionable for the reasons before stated, and cannot be approved.

DAVID B. HILL.

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VETO, ASSEMBLY BILL, No. 51, RELATING TO  
THE LOWELL CEMETERY ASSOCIATION.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *March 20, 1885.* }

*To the Assembly:*

Assembly bill number fifty-one, entitled "An Act to authorize the Lowell Cemetery Association, in the town of Westmoreland, county of Oneida, to reduce the number of trustees thereof," is herewith returned without approval.

There is no objection to this corporation reducing the number of its trustees, except that it should not be done by special legislation. The Legislature should not be called upon to act in reference to such comparatively unimportant matters.

This association was not incorporated under a special act, but was organized under chapter 133 of the Laws of 1847, which was a general act providing for the incorporation of rural cemetery associations. It is true that there is no provision in that act for reducing or increasing the number of trustees of any association organized under it, but it can be easily amended by providing for

such a proceeding, and that course should be taken. There are a large number of such associations throughout the State organized under the same act, and instead of amending each of their charters by a special act whenever they desire additional powers or privileges, the general act should be amended so as to confer the same upon all of them. Some of them should not have peculiar rights or privileges to the exclusion of others.

The Constitution prohibits the Legislature from granting special charters to such corporations as these, but if after being once organized under general acts, it can amend their charters from time to time at its discretion, the Constitution is easily evaded and the prohibition is practically valueless.

It seems needless to urge that it is our duty to prevent all unnecessary local legislation, in order that the Legislature may have ample time to consider other and more important measures of material interest to the whole State.

It is observed that a general act amending the act of 1847 has already been introduced in the Assembly to provide for the very objects sought to be accomplished by this bill.

DAVID B. HILL.

## CORRESPONDENCE RELATING TO CENSUS ENUMERATORS, AND CLASSIFICATION UNDER THE CIVIL SERVICE RULES.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *March 21, 1885.* }*To the Attorney General of the State of New York, Albany, N. Y. :*

SIR.—To carry out the provisions of section 4 of article 3 of the Constitution, chapter 64 of the Laws of 1855, provides for the enumeration of the inhabitants of the State to be taken in the year 1855, and during every tenth year thereafter.

Notwithstanding the fact that no appropriation has been made, as yet, to carry out the provisions of chapter 64 of the Laws of 1855, or steps taken by the Legislature to establish any other system of enumeration, I learn that preparations are being made for taking the census of this year under the provisions of the act above referred to.

I, therefore, ask an opinion from you as to whether the law entitled "An Act to regulate and improve the civil service of the State of New York" (chapter 354 of the Laws of 1883), in which it is made the Governor's duty to cause to be arranged in classes the persons employed in the public service, is applicable to appointments made under chapter 64 of the Laws of 1855.

I am, very respectfully yours,

DAVID B. HILL.

## OPINION OF THE ATTORNEY GENERAL.

STATE OF NEW YORK.

OFFICE OF THE ATTORNEY GENERAL,

ALBANY, *March 21, 1885.* }To Hon. DAVID B. HILL, *Governor* :

DEAR SIR.—In response to the inquiry made in your communication of this date, whether the law entitled “An Act to regulate and improve the Civil Service of the State of New York” is applicable to appointments made under chapter 64 of the Laws of 1855, I beg leave to submit the following :

The Civil Service Act, chapter 354, Laws of 1883, does not, in express terms, define its precise scope and object.

It provides, in the first section, for the appointment of what shall be known as the New York Civil Service Commission.

In the second section it is declared to be the duty of such commission to aid the Governor upon his request in preparing suitable rules for carrying the act into effect, and when such rules shall have been promulgated, it is made the duty of all officers of the State of New York, to whose departments and offices such rules may relate, to aid in all proper ways in carrying them into effect.

The second subdivision of this section declares that such rules shall provide, as nearly as the condition of good administration will warrant, among other things, for open competitive examinations for testing the fitness of applicants for public service which may be classified under the act, and these examinations must be practical in their character and relate specially to the qualifications required for the particular branch of the service which the applicant seeks to enter ; and all offices, places and employments so classified must be filled by selections from those rated highest as the result of such examination.

Section six of the act makes it the duty of the Governor to cause to be arranged in classes the several clerks and persons employed or being in the public service for the purposes of

the examination provided in the act, and he is required to include in one or more of such classes, so far as practicable, all subordinate places, clerks and offices in the public service of the State.

Section seven provides that after eight months from the expiration of the legislative session of 1883, no officer or clerk shall be appointed or admitted to or promoted in either of the classes arranged pursuant to such rules until he has passed such an examination or had been specially exempted therefrom. The concluding provision of this section exempted from the classification required by the act all elective officers and all persons merely employed as laborers or workmen and all appointed officers requiring confirmation by the Senate, unless that body should require them to pass an examination.

It will thus be seen that with the exception of the public officers exempted by the provisions of section seven, this act applies and was designed to apply to all persons employed in the public service of the State, and it is also expressly declared to be the duty of the Governor to cause all such persons to be classified for the purposes of examination, and when the classification has been made it prohibits the appointment of a person to the public service or his promotion therein unless he has been found to possess the requisite qualifications therefor as a result of the examination prescribed by the civil service rules.

The wisdom and sound public policy of the enactment are not under consideration, but only its general scope and object as gathered from the scheme which it sought to inaugurate.

It was evidently the design of the law-making power that, aside from the excepted classes, a certain test of fitness should be exacted from every applicant for a place in the public service, especially where the office was to be filled by appointment, in order that merit, and not favoritism, should determine the selection.

By chapter 64 of the Laws of 1855, the Secretary of State is required in that year and in every tenth year thereafter, to cause an enumeration of the inhabitants of the State to be made; and in order to aid him in the proper execution of such work, he is authorized to appoint one or more persons in each town

or ward designated in that act as "marshals" and in subsequent acts as "enumerators," whose duty it is, under his direction, to collect and return to him the necessary data to make up a complete census of the inhabitants of the State.

Such persons, when so designated, will undoubtedly be employed in the public service of the State, and are clearly amenable to the provisions of the Civil Service Act. The work to be performed by them is the most important part of the service to be rendered in taking the State census. Unless well and accurately done, such work will be of little value to the people of the State. It is an employment where especial fitness may well be required for the service to be rendered, and applicants for such places are thus brought not only within the spirit, but within the letter of the Civil Service law.

As the imperative duty is devolved upon the Governor to cause all places, clerks and offices in the public service of the State to be included in the classification to be made for the purposes of a competitive examination so far as may be practicable, there would seem to be the obligation imposed upon the Executive to make these enumerators subject to the civil service rules unless there is some practical difficulty in the way of the enforcement of such rules when applied to this class of officers.

But the time, the method and the extent of the examination to be required are all under the control of the Governor and the Civil Service Commissioners, and such reasonable regulations can be adopted by them as will secure a satisfactory test of the qualifications of all applicants, and with but slight expense to the State and to the applicant.

I am, therefore, of the opinion that the census enumerators who may be appointed under the provisions of the act of 1855 may be properly made subject to the Civil Service Act, and I see no difficulty in the way of its practical enforcement with respect to their appointment.

Very truly yours,

D. O'BRIEN,

*Attorney General.*

## THE GOVERNOR TO THE CIVIL SERVICE COMMISSION.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *March 21, 1885.* }*To the New York Civil Service Commission, Albany, N. Y. :*

Chapter 64 of the Laws of 1855 provides for the selection of officers known as enumerators, to take the census of the State.

I am advised that persons who apply to be appointed as such enumerators, are applicants for the public service within the meaning of the civil service act.

They should, therefore, be properly classified for the purpose of examination, under that act, and I have to request that you will prepare a rule to that effect.

I am, very respectfully yours,

DAVID B. HILL.

## REPLY OF THE COMMISSION.

STATE OF NEW YORK.

OFFICE OF CIVIL SERVICE COMMISSION,

ALBANY, *March 21, 1885.* }*His Excellency the Governor :*

SIR.— We have the honor to acknowledge your Excellency's communication of this date, referring to chapter 64 of the Laws of 1855, providing for the selection of officers known as enumerators to take the census of the State.

Your Excellency states that you are advised that persons who apply to be appointed as such enumerators are applicants for the public service within the meaning of the Civil Service Act, and that they should, therefore, be classified for the purpose of examination under that act, and you request this Commission to prepare a rule to that effect.

This Commission have accordingly, after careful delibera-

tion, placed the census enumerators in Class II of the classified service and under the provisions of the fourth rule have enrolled them in Schedule D, as your Excellency will see by the enclosed extract from their minutes. As your Excellency remarked in our interview of this morning, that the opinion of the Attorney General by which you had been advised of the liability of the census enumerators to the Civil Service Act would be filed as of this date, the Commission would be glad to have a copy of the opinion filed in this office and request the favor of a copy for that purpose.

Very respectfully yours,

JOHN JAY,  
*President.*

### ORDER CLASSIFYING CENSUS ENUMERATORS.

At a meeting of the Civil Service Commission, held March 21, 1885, upon consideration of a communication from the Governor relative to persons employed under the provisions of chapter 64, Laws of 1855, as enumerators for the purposes of the decennial census of this State, it was

*Resolved*, That census enumerators be included in Class II of the classified service, and under the provisions of the fourth rule be enrolled in Schedule D.

Attest :

CLARENCE B. ANGLE,  
*Secretary.*

STATE OF NEW YORK, }  
EXECUTIVE CHAMBER. }

Approved March 21, 1885.

DAVID B. HILL,  
*Governor.*

VETO, ASSEMBLY BILL No. 229, TO REGULATE  
ELECTION OF COMMISSIONER OF HIGHWAYS  
FOR GREENBURGH.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *March 23, 1885.* }

*To the Assembly:*

Assembly bill No. 229, entitled "An Act to regulate the election of Commissioner of Highways in the town of Greenburgh, county of Westchester," is herewith returned without approval.

This bill is objectionable because it is special legislation. It relates to the election of one town officer in a single town of the State. It provides that no person who is a resident of any village situate in the town of Greenburgh shall be eligible to the office of commissioner of highways of said town.

It is difficult to discover why it is any more improper or unwise for residents of villages in this particular town to be eligible to this office than residents of other villages in other parts of the State similarly situated.

The law upon this subject should be uniform throughout the State. If for any good reason a resident of an incorporated village ought to be prohibited from holding this particular town office, the prohibition should be universal, and not restricted to a locality. Special legislation should always be avoided, except where it is indispensable to meet emergencies of absolute necessity, or where imperatively demanded to enforce the observance of constitutional guarantees.

These conditions are not claimed to exist in respect to the measure in question.

The act is also of questionable propriety. It would seem to be expedient, as well as sound public policy, that all of the electors of each town should remain eligible to every office within the town, and the selection of competent and faithful officials may as appropriately be left to the good sense and sound discretion of the electors, who usually act intelligently and sagaciously in such local matters, as to attempt to impose disqualifications on a portion of the electors by legislative interference, preventing the voters from selecting whomsoever they choose for their town officers.

DAVID B. HILL.

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VETO, ASSEMBLY BILL No. 292, GRANTING  
LANDS UNDER WATER AT HUDSON TO W. F.  
LAWRENCE.

STATE OF NEW YORK.

EXECUTIVE CHAMBER, }  
ALBANY, March 23, 1885. }

*To the Assembly:*

Assembly bill No. 292, entitled "An Act to convey to William F. Lawrence certain lands under the waters of the Hudson river at the city of Yonkers," is herewith returned without approval.

This act would establish a bad precedent.

While the Legislature undoubtedly has the inherent power by a legislative act to convey lands of the State under water, the exercise of such power has been very

infrequent in the history of the State, and was not contemplated by the Constitution.

The Constitution intended to create a tribunal or body for such purposes, and it provides (art. 5, sec. 5) for a board to be known as "Commissioners of the Land Office," and such commissioners are vested by statute with the control and disposition of such lands. It is their special province to make grants in perpetuity or otherwise upon proper terms, as they may deem necessary to promote the commerce of the State or proper for the purpose of beneficial enjoyment by adjacent owners, after a due investigation of all the facts, which inquiry they are empowered to institute. Such a board—which consists of seven State officers—is peculiarly adapted for the creditable discharge of such duties, and can better ascertain the real merits of the applications for such lands, and more efficiently protect the interests of the State, than can the Legislature acting during its hurried session.

A departure from the long-established precedent of refraining from legislative interference in matters which are conceded to be within the proper jurisdiction of such board should not now be attempted, but the present applicant should be left to pursue the usual course which has heretofore been followed. The time and attention of the Legislature should not be permitted to be engrossed in private legislation of this character, when a proper tribunal has been established for the accomplishment of the very objects contemplated by this bill.

It is not only special, but private legislation, which is wholly unnecessary.

By reference to the public papers of Governor Hoffman, at page 139, it will be found that in 1870 a bill of similar

character failed to meet Executive approval; the Governor's objection being based on the ground alone that the Commissioners of the Land Office had full power in the matter.

DAVID B. HILL.

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APPOINTMENT OF COMMISSIONERS TO EXAMINE  
GEORGE H. MILLS, A CONVICT.

STATE OF NEW YORK,                    }  
EXECUTIVE CHAMBER.                }

I hereby appoint Carlos F. McDonald, M. D., of the city of Auburn, and William C. Wey, M. D., of the city of Elmira, Commissioners to examine George H. Mills, now confined in the Kings county jail under sentence of death, and to report their conclusions as to his present sanity, and their opinion as to his sanity at the time of the commission of the act for which he was convicted; such report to be made to me in writing, on or before April sixth, proximo.

Given under my hand and the privy seal of the  
State, at the Capitol in the city of Albany, this  
[L. s.] twenty-fifth day of March, A. D. one thousand  
eight hundred and eighty-five.

DAVID B. HILL.

By the Governor :

WILLIAM G. RICE,  
*Private Secretary.*

# THE CIVIL SERVICE — CLASSIFICATION OF AN EXECUTIVE CLERK AND MESSENGER OF THE COURT OF CLAIMS.

STATE OF NEW YORK.

OFFICE OF THE CIVIL SERVICE COMMISSION. }

At a meeting of the Civil Service Commission held March 31, 1885, it was

*Resolved*, That under the provisions of the fourth rule one executive clerk in the office of the Governor be and hereby is transferred from schedule B to schedule C.

*Whereas*, The duties of the messenger of the Court of Claims are identical with those performed by the attendants in the other courts of the State ;

*Resolved*, That the said messenger be classified as a court attendant, and accordingly enrolled in schedule C, as provided by the twentieth rule.

Adopted by the Civil Service Commission, March 31, 1885.

CLARENCE B. ANGLE, *Secretary*.

Approved:

DAVID B. HILL, *Governor*.

# THE CIVIL SERVICE — AMENDMENTS TO RULES.

STATE OF NEW YORK.

OFFICE OF THE CIVIL SERVICE COMMISSION. }

*Resolved*, That Rule XXXIV be amended by substituting for the words "but such temporary appointment can be made only once," the words "but no person shall be appointed temporarily a second time unless sixty days have elapsed since the termination of his previous term of temporary service ;" also,

*Resolved*, That Rule XIX be amended by extending the time that eligible candidates may remain on the register from one year to two years from date of examination.

Adopted by the Civil Service Commission, March 31, 1885.

CLARENCE B. ANGLE, *Secretary*.

Approved:

DAVID B. HILL, *Governor*.

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### THE CIVIL SERVICE—COMPETITIVE EXAMINATION IN THE CASE OF CENSUS ENUMERATORS.

STATE OF NEW YORK.

OFFICE OF CIVIL SERVICE COMMISSION. }

A communication having been received from his Excellency the Governor, dated March 30, 1885, advising the Commission of his desire that the examination of the census enumerators be made competitive, it was unanimously

*Resolved*, That the following formula be submitted for his Excellency's approval as accomplishing the transfer desired by him :

Transfer of census enumerators to schedule B.

The resolution adopted March twenty-first, and approved by the Governor under the fourth rule, classifying and enrolling census enumerators, is hereby amended so as to read as follows :

*Resolved*, That census enumerators be included in Class II of the classified service and under the provisions of the fourth rule, be enrolled in Schedule B.

Adopted, April 1, 1885.

CLARENCE B. ANGLE, *Secretary*.

Approved, April 1, 1885.

DAVID B. HILL, *Governor*.

VETO, ASSEMBLY BILL No. 63, PROVIDING FOR  
APPEALS FROM THE BOARD OF CLAIMS.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, April 1, 1885. }

*To the Assembly :*

Assembly bill No. 63, entitled "An Act to amend chapter 318 of the Laws of eighteen hundred and eighty-four, entitled 'An Act to authorize the Board of Claims to hear, audit and determine the claims of the State for balances due on the books of the Comptroller from certain counties,'" is herewith returned without approval.

This bill proposes to authorize an appeal to the Court of Appeals from any award which may be made by the Board of Claims under the Act of 1884, sought to be amended.

The Court of Appeals is already overburdened with litigation occasioned by its extensive appellate jurisdiction, and new labors should not be imposed upon it unless imperatively demanded.

There does not seem to be any absolute necessity for the bill. The Act of 1884, which provides that the Board of Claims may hear, audit and determine the claims of the State for balances due upon the books of the Comptroller from certain counties, contemplates a proceeding of the nature of an arbitration and not a hostile measure similar to a suit at law. If the award is adverse to any counties, there seems to be no provision made in the act for its enforcement by judgment or decree. The hearing is rather in the nature of an impartial investigation to enable the State and the counties interested to amicably ascertain

the true situation of their accounts. It lacks many of the attributes of a judicial determination, and certainly the awards have not, in many respects, the effect of judgments.

No appeals should be authorized to be taken to the highest court of the State from mere investigations or arbitrations. In analogy to arbitrations generally the awards in these proceedings should be final and conclusive; or, at least, should not be reviewed in the first instance by the court of last resort. If they should be reviewed at all by any court, the Special or General Terms of the Supreme Court should first pass upon them. No very important questions of law are likely to be involved in the decision of such claims, and the necessity for their review at all, is not apparent.

The provisions of this bill would lead to unnecessary litigation, useless expense, and unsatisfactory legal results.

I cannot learn that the bill is desired either by the Attorney General, the Board of Claims, the Comptroller of the State, or the Court of Appeals.

DAVID B. HILL.

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#### APPOINTMENT OF A SPECIAL AND EXTRAORDINARY COURT OF OYER AND TERMINER.

STATE OF NEW YORK, }  
EXECUTIVE CHAMBER. }

It appearing to my satisfaction that the public interest requires it, therefore, in accordance with the statute in such case made and provided, I do hereby appoint a Special and Extraordinary Court of Oyer and Terminer to be held at the court-house, in the city of Oswego, on Tuesday, the

nineteenth day of May next, at ten o'clock in the forenoon of that day, and to continue so long as may be necessary for the disposal of the business that may be brought before it; and I do hereby designate the Honorable John C. Churchill, a justice of the Supreme Court, to hold the said Special and Extraordinary Court of Oyer and Terminer;

And I direct the District Attorney of said county of Oswego to issue a precept in accordance with the statute in such case made and provided, directed to the sheriff of the said county of Oswego, requiring him to do and perform all that may be necessary on his part in the premises;

And I do further direct that notice of such appointment be given by publication thereof once in each week for three successive weeks prior to the holding of said court, in the Albany Argus, a newspaper published at Albany, and in the Oswego Palladium, a newspaper published at Oswego.

Given under my hand and the privy seal of the State  
at the Capitol in the city of Albany, this second  
[L. s.] day of April, in the year of our Lord one  
thousand, eight hundred and eighty-five.

DAVID B. HILL.

By the Governor :

WILLIAM G. RICE,

*Private Secretary.*

REPORT OF COMMISSIONERS AS TO THE MENTAL  
CONDITION OF GEORGE H. MILLS, CONVICT.

To the Hon. DAVID B. HILL, *Governor of the State of  
New York:*

SIR.—The undersigned commissioners, appointed by you to examine George H. Mills, now confined in the Kings county jail, under sentence of death, and to report their conclusions as to his present sanity and their opinion as to his sanity at the time of the commission of the act for which he was convicted, such report to be made in writing on or before April 6, 1885, respectfully submit: That they carefully examined the said George H. Mills on the first and second days of April, instant, and also took statements from Charles B. Farley, sheriff; Martin V. B. Burroughs, warden; Rev. Job G. Bass, chaplain; Dr. A. Warner Shepard, physician; Patrick Shevlin, keeper in said jail; also Hon. Henry A. Moore, county judge; Mark D. Wilber, Esq., prisoner's counsel; John E. Barnes, Esq., clerk to prisoner's counsel; Dr. Edward C. Mann, of Brooklyn, Andrew Mills and Thomas H. Mabee, of the city of New York, and Samuel B. Mills, Samuel Robert Mills and Peter Hudson, of the city of Brooklyn; and further, that they have read the testimony in the case as furnished them by your Excellency, from stenographic notes, and acting upon the information derived from these several sources, they have arrived at the conclusion that the said George H. Mills, at the date of the commission of the act for which he was convicted, was not insane and is not now insane.

CARLOS F. MACDONALD,

WILLIAM C. WEY,

BROOKLYN, N. Y., *April 2, 1885.*

*Commissioners.*

SPECIAL MESSAGE—THE CIVIL SERVICE AND  
CENSUS ENUMERATORS.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, April 6, 1885. }

*To the Legislature :*

The Civil Service Commission have requested me to inform you that in order to insure the proper examination of census enumerators who are expected to be appointed to conduct the approaching census, it is necessary that there should be immediately appropriated a sufficient sum to defray the expenses incident thereto.

This is required to cover the expense of stationery, printing, postage, advertising, some extra clerical services, and other miscellaneous disbursements.

The Commission are without adequate funds for such purposes, and in the absence of an express appropriation therefor, are believed to have no authority to incur any indebtedness on account thereof.

The Commission are vested by law with the sole power of appointing examiners, and, instead of making political appointments by selecting the persons who had been suggested to them, concluded, in order to save expense to the State and in the exercise of a proper discretion, to select for such examiners persons already employed in the civil service throughout the State, who, by the law, are required to conduct such examinations without additional compensation.

The wisdom and propriety of the course pursued by the Commission in respect to such examiners, as well as in the classification of enumerators under the rules formu-

lated by them, are very manifest, and if their efforts are supplemented by needed legislation, will secure the appointment of competent and intelligent enumerators, selected solely for their fitness, rather than political favorites appointed as a reward for factional or political services, and will insure capable examining boards already organized, non-partisan in character and especially qualified for the work to be done.

The Commission further request me to make known to the Legislature their desire for the postponement of the date fixed for the commencement of the taking of the census and the appointment of the enumerators, because, in their judgment, the limited time which they understand is allowed by law is insufficient for the proper accomplishment of the examinations contemplated by the rules. This can only be done by legislative enactment, but it can easily be provided for in an act making the necessary appropriation.

It is evident that the Commission labor under the impression that it is absolutely indispensable under the Act of 1855, that all the appointments, in order to be valid, should be made on or before May first next; but it may be suggested that the provisions of that act, in reference to the date of making such appointments are only directory, and do not invalidate any appointments which may be subsequently made prior to the actual commencement of the taking of the census, which is not required to be begun until the first Monday in June.

It should not be anticipated that there will be any undue haste to make such appointments, as the only purpose thereof would be to evade the civil service rules. But, nevertheless, the advisability of express legislation

granting further time, even beyond either of the dates mentioned, is very apparent, and I concur in the views of the Commission in that regard. It rests with the Legislature to take such action as will facilitate the application of civil service rules and render them effectual.

Having thus complied with the request of the Commission to communicate to you their desire for further and immediate legislation, it is not deemed inappropriate at this time to respectfully call your attention to my special message of January nineteenth last, wherein several recommendations were urged in reference to the subject of the census. No definite action having been taken concerning them since that date, and no appropriation having as yet been made for the taking of any census whatever, which appropriation may be an indispensable condition precedent to all legal preliminary preparations therefor, and while the subject thus remains unacted upon and must be presently considered, it may be useful to recall the suggestions then made, in order that the propriety of their adoption may be considered with the other legislation now advised. Among other things, it was proposed :

*First.* That the taking of the census be changed from the summer months to late in the fall. This course had been recommended by two previous Secretaries of State, for the obvious reason that an accurate census could not well be taken in our large cities during the summer months, when a considerable portion of the people were absent and their residences closed. This change is manifestly just and should not be opposed. It is hoped that no partisan advantage which may be anticipated can be derived by insisting upon a date so clearly unjust to the large cities, will prevent the Legislature from adopting the change suggested.

*Second.* It was recommended that the census be limited to the simple enumeration of the inhabitants as contemplated by the Constitution.

It is believed that it was clearly demonstrated that most of the statistical information collected under previous censuses is either absolutely worthless or is cumulative, having already been obtained from other sources. It is clear that if the approaching census should be limited in the manner proposed, it would effect a saving to the State at large of over \$118,000, and in addition thereto a saving to the respective counties of over \$189,000, being a total saving of over \$307,000. The main labor, expense and time required for the census, is involved in the collection of this "other statistical information," and, if this shall be dispensed with, it can be readily seen that the expense will be but nominal as compared with the vast amounts required if the old course shall be continued. It is confidently believed that the taxpayers of the State will cordially approve of such a change and consequent saving of their money. It is quite likely that several schemes or bills now pending before the Legislature, requiring the expenditure of vast sums of money may (perhaps properly) be passed, and it is sound policy, in anticipation of such possible demands upon the treasury, to encourage a rigid economy and avoid a useless expense wherever it is feasible. The present furnishes a most favorable opportunity.

*Third.* It is further insisted that the civil service rules be expressly applied by affirmative legislation to the selection of the enumerators.

This recommendation was presented to obviate any possible doubt as to whether the civil service law applied to such positions. That doubt has been removed by the



chapter 298 of the Laws of 1838, such Commissioners to serve without expense to the State.

In testimony whereof, I have hereunto set my hand and the privy seal of the State, at the Capitol [I. s.] in the city of Albany, the seventh day of April, in the year of our Lord one thousand eight hundred and eighty-five.

DAVID B. HILL.

By the Governor :

WILLIAM G. RICE,

*Private Secretary.*

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APPOINTMENT OF A SPECIAL AND EXTRAORDINARY COURT OF OYER AND TERMINER AT OSWEGO, AND REVOCATION OF PRIOR ORDER.

STATE OF NEW YORK.

EXECUTIVE CHAMBER. }

It appearing to my satisfaction that the public interest requires it, therefore, in accordance with the statute in such case made and provided, I do hereby appoint a special and extraordinary Court of Oyer and Terminer, to be held at the Court-house in the city of Oswego, county of Oswego, on Tuesday, the twelfth day of May next, at ten o'clock in the forenoon of that day, and to continue so long as may be necessary for the disposal of the business that may be brought before it; and I do hereby designate the Hon. John C. Churchill, a justice of the Supreme Court, to hold the said special and extraordinary Court of Oyer and Terminer;

And I direct the district attorney of said county of Oswego to issue a precept in accordance with the statute in such case made and provided, directed to the sheriff of the said county of Oswego, requiring him to do and perform all that may be necessary, on his part, in the premises ;

And I do further direct that notice of such appointment be given by publication thereof once in each week for three successive weeks prior to the holding of said court, in the Albany Argus, a newspaper published at Albany, and in the Oswego Palladium, a newspaper published at Oswego.

The order heretofore issued by me under date of April second, appointing a special and extraordinary Court of Oyer and Terminer for Oswego county on the nineteenth day of May, is hereby revoked.

Given under my hand and the privy seal of the State, at the Capitol in the city of Albany, this  
[L. s.]   tenth day of April in the year of our Lord one thousand eight hundred and eighty-five.

DAVID B. HILL.

By the Governor :

WILLIAM G. RICE,

*Private Secretary.*

VETO, SENATE BILL No. 152, AUTHORIZING A  
VILLAGE HALL AT MIDDLETOWN.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, April 10, 1885. }

*To the Senate:*

Senate bill No. 152, entitled "An Act to authorize the village of Middletown, in the county of Orange, to raise money to construct a village hall," is herewith returned without approval.

This bill is wholly unnecessary. It authorizes the board of trustees of the village of Middletown to construct a village hall and to issue the bonds of the corporation in an amount not exceeding the sum of \$25,000, and contains some other provisions relating to the same subject.

By chapter 482 of the Laws of 1875, the board of supervisors of Orange county have the power to grant to the village of Middletown all the necessary powers which this bill seeks to confer. The objects of this bill can, therefore, be accomplished by application to the local authorities of the county.

A bill of substantially the same character in nearly every respect was vetoed by Governor Cleveland last year.

As an excuse for this act it is claimed that there is no authority in the general act by which the board of supervisors of Orange county can authorize the village to issue bonds for the purpose of erecting the village hall. Such authority is not necessary.

The supervisors have the power to authorize the erection of the building and the purchase of the site therefor,

and, having given the village authority to create the necessary indebtedness, the village has the right, under existing laws, to issue bonds to raise the money to meet such indebtedness.

Any municipal corporation authorized to create an indebtedness can issue its notes or bonds on account of any valid indebtedness which it has incurred. The courts have uniformly so decided.

DAVID B. HILL.

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MEMORANDUM FILED WITH THE SECRETARY OF  
STATE AND ACCOMPANYING ASSEMBLY BILL,  
NOT PRINTED, INCORPORATING THE CITY OF  
AMSTERDAM. APPROVED.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *April 16, 1885.* }

Two successive Legislatures have passed a bill incorporating Amsterdam as a city. The one passed last year was disapproved by Governor Cleveland, but upon grounds which do not affect the other bill which is now before me. Each Legislature seems to have acted with substantial unanimity, and the approval of the present bill is urged by both the Senator and Member of Assembly who represent the district in which Amsterdam is situate. Under such circumstances, that Executive approval should be withheld can hardly be expected or justified.

The granting of a city charter is usually purely a matter of discretion on the part of the Legislature, with which the Executive ought not arbitrarily to interfere. No mat-

ter what the private opinion of the Executive may be as to the wisdom or mere propriety of such legislation, the will of the people, as expressed by legislative action, and as announced by their chosen representatives should be permitted to prevail unless some important general principle or policy is to be violated or the interests of the State at large are to be injured.

The local representatives assume the responsibility of such legislation where matters of discretion only are involved, and due deference is naturally expected to be paid to their desires and wishes in reference to local affairs, on the part of the Executive, who cannot properly ignore them.

The charter in question is not claimed to be faultless, but it seems to have been finally carefully perfected, and no serious defects are now pointed out. The objections to it on the part of its opponents are not specially to any of its particular provisions, but because no city charter whatever is desired.

It is insisted by the opponents of the bill that the people of the village are opposed to a city government. That question, however, would seem to have been settled by the people themselves, who, at a recent election, voted upon this very subject, and by a majority vote expressed themselves favorably to the creation of a city. It is admitted that the question was well understood and was fairly submitted to the electors for their decision, and nothing has been shown to impeach the good faith of such submission or to detract from the legitimate effect which should be given to the sentiment thus expressed by the vote of the people. That vote has not been satisfactorily explained away and its significance cannot be ignored. In no other way was the sentiment of the people to be ascertained,

and if the result of that contest is to have no weight, it was an idle and senseless proceeding indeed.

Unless I am justified in relying upon that vote as the true index of public sentiment, I am entirely at sea, and have no means of determining the conflicting claims which have been made before me. The friends of the bill assert with positiveness that a majority of the people of Amsterdam favor it, while its opponents are equally certain that such majority are opposed to it. I am utterly unable to decide between these irreconcilable claims, unless I may properly rely upon the result of the recent election, when the people voted directly upon the question. It would seem to be reasonable that such result should be accepted as conclusive. In fact it is difficult to see how the opponents of this bill can consistently or with propriety ask or expect the Executive to ignore or attempt to reverse such an expression of the people, especially after it has been respected and obeyed by the legislative branch of the government.

It is true that the majority was small, but it is nevertheless just as decisive. The majority must govern in this country, no matter how close the vote may be, and this rule applies to local as well as to national and State affairs.

It may be said that the majority have acted indiscreetly or unwisely, and that a bare majority should not be permitted to determine such a question. It is to be assumed that the electors themselves must necessarily be left to determine mere matters of discretion, and that unless a majority are permitted to decide such matters they must in effect be controlled by the minority, which would be far worse, and is contrary to the genius of our institutions. If the people make mistakes the people may be trusted to rectify them.

There are some other reasons affecting this question which while they are not controlling are entitled to be considered.

It is conceded that Amsterdam is growing rapidly, and that the adoption of a city government is only a matter of a year, or a few years. Its present charter is admitted to be defective, and sadly needs revision. Its corporate limits have not been extended for over thirty years, and naturally are now quite contracted. Its streets are in a wretched condition, and many public improvements are greatly needed, which cannot well be accomplished under the present village charter. Its population is sufficient to entitle it to become a city, and its necessities would seem to require and justify it. If a city government will be absolutely necessary in the near future, it would seem to be the part of wisdom to accept it now, rather than seek to amend the village charter and extend the village limits, when these changes must in all probability be followed in a year or so by an entire change of government.

Besides the prosperity and well being of Amsterdam seem to demand that this vexed question be settled at once. This contest has existed for several years, and has led to much bitterness and dissension, which have necessarily retarded the growth and injured the prospects of the village.

Adverse action on this bill would only protract the controversy for another year, and will not advance the best and truest interests of Amsterdam, which I am desirous of promoting.

It is far better that the issue be settled now, and while regretting that I am obliged to assume the responsibility of deciding so important and unpleasant a contest, I cannot, in the discharge of my public duty, either evade or postpone it.

It may be remarked that a mere change in the form of local government will not, of itself, materially aid the people of Amsterdam, or give them a better administration, unless the citizens who are interested in its true welfare take an active and intelligent interest in public affairs and see to it that only those are elected to office who will honestly carry out the benign provisions of the new charter with vigor, economy, and a commendable public spirit. If such a determination shall be manifested on the part of the people as well as the taxpayers of that village, there can be no doubt that the new charter will be instrumental for beneficial results, and that few will regret the change about to be made.

But, as before stated, the mere propriety of the adoption of the present charter is not to be considered here. That question has been passed upon by the Legislature. There may be good arguments on both sides, but they are more properly addressed to the Legislature than to the Executive. It is possible that a city government is not needed at the present time, and that a change will involve increased taxes and produce other unsatisfactory results. It is not, however, pertinent to speculate upon such questions, or to anticipate objections which should be raised elsewhere.

The action which I feel obliged to take is based upon the safe, tenable and reasonable ground that the people themselves have decided the question, and such decision having been accepted by the Legislature, it is conclusive upon me. It follows that I cannot, under all the circumstances, do otherwise than approve this bill.

DAVID B. HILL.

VETO, SENATE BILL, NOT PRINTED, AMENDING  
CORPORATE NAME OF THE ELMIRA FEMALE  
COLLEGE.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

*To the Senate :*

ALBANY, April 27, 1885. }

Senate bill, not printed, entitled "An Act to amend the corporate name of the 'Elmira Female College,'" is herewith returned without approval.

This act is wholly unnecessary. The Elmira Female College is a corporation of this State, and chapter 280 of the Laws of 1876 provides that such a corporation can have its name changed upon proper application to the Supreme Court.

The Legislature should not pass special laws where the objects thereof can be obtained upon application to the courts.

DAVID B. HILL.

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VETO, SENATE BILL No. 71, RELATING TO CORO-  
NERS IN RENSSELAER COUNTY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

*To the Senate :*

ALBANY, April 28, 1885. }

Senate bill, No. 71, entitled "An Act to amend chapter three hundred and ninety-eight of the Laws of eighteen hundred and seventy-six, entitled 'An Act to provide for the election and compensation of coroners in the county of Rensselaer,' and also to regulate the proceedings of such coroners," is herewith returned without approval.

This bill establishes for the coroners of Rensselaer county a different method of procedure from that prevailing in other counties. Their duties, as well as those of other county officers, should so far as possible, be uniform throughout the State.

The proceedings and duties of coroners are regulated and prescribed by Title I of Part VI of the Code of Criminal Procedure. It is claimed by the advocates of this bill that abuses are possible under the regulations there laid down. If this is so, the Code itself should be amended, and all provisions relating to coroners thus be incorporated in the general law covering the subject. A coroner in one county should not possess greater powers or privileges, or be under restrictions which are not applicable to all coroners in the State.

The changes proposed by this bill are doubtless intended to serve good purposes, but I am unwilling to approve a measure which limits their application to a single county.

DAVID B. HILL.

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VETO, SENATE BILL No. 62, AUTHORIZING  
CLERKS OF ONEIDA AND COLUMBIA COUNTIES  
TO RECORD NOTICES OF PENDENCY OF ACTION.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, April 28, 1885. }

*To the Senate :*

Senate bill No. 62, entitled "An Act to authorize the county clerks of Oneida and Columbia counties to record certain notices of pendency of action now on file in the

county clerk's offices of said counties," is herewith returned without approval.

This act authorizes the county clerks of Oneida and Columbia counties to record at the expense of their respective counties certain notices of pendency of action filed in such county clerks' offices prior to 1864 and not heretofore recorded.

Chapter 53 of the Laws of 1864 required that all notices of pendency of actions which should thereafter be filed in any clerk's office of this State, should be recorded by the county clerk, and that law has ever since been observed. That act further provided that any county clerk should record any such notices previously filed, provided any person interested therein should request such recording and pay the legal fees therefor. The proposed act, however, contemplates the recording of all such notices filed in the clerk's offices of the two counties in question prior to 1864, irrespective of any request from any one, and such recording is not to be at the expense of the parties interested, but at the expense of the county. This expense must necessarily be very considerable, and should not be authorized unless absolutely indispensable. There would seem to be but little necessity for such old papers being recorded, and this bill is unquestionably a cleverly devised scheme to financially aid the county clerks of the counties of Oneida and Columbia, and is not to subserve any real public interest. If there exists any good reason why such old papers should at this late day be recorded, the boards of supervisors of such counties have authority to authorize the clerks to perform such labor, and can pay them a reasonable compensation therefor. It does not appear that any application for such authority has

been made to the board of supervisors of either of said counties.

Bills should not be passed imposing burdens upon the taxpayers of counties where authority exists in the boards of supervisors to determine such questions. Legislation having for its object such purposes as this should be remitted to the local authorities of each county, who are better able to judge of the necessity and propriety thereof.

DAVID B. HILL.

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# VETO, SENATE BILL, NOT PRINTED, TO AMEND THE CHARTER OF ELMIRA.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, April 29, 1885. }

*To the Senate:*

Senate bill, not printed, entitled an "An Act to amend chapter three hundred and seventy of the Laws of eighteen hundred and seventy-five, entitled 'An Act to amend and consolidate the several acts relating to the city of Elmira,'" is herewith returned without approval.

This bill provides for the creation of another ward in the city of Elmira, by the division of the present Fifth ward. Its enactment is not demanded by the public interests.

For the present, the Fifth ward is not so large in population as to require any division. It, last fall, had only a voting population of 990, while at the recent charter election it polled only 811 votes.

The division of this ward, at the present time, will be unfair to the rest of the city, and would inevitably lead to a demand for the division of other wards nearly as large.

The Fourth ward, last fall, had a voting population of 925, being only sixty-five votes less than were cast in the Fifth ward, while this spring the Fourth ward polled but thirty-two votes less than the Fifth ward.

There already exist a sufficient number of wards for so small a city, and it is better for all concerned that they should remain as they are until a greater increase of population, or an enlargement of the city limits, shall render the propriety of a change more apparent.

The creation of a new ward gives an additional supervisor to the city, and, in view of the differences now existing between the city and the country towns in the Board of Supervisors, this legislation seems unwise and ill-advised.

A majority of the supervisors of the county are opposed to the bill, and since its introduction the common council of the city have also passed resolutions disapproving it, and have divided the ward into two election districts, thereby obviating some of the reasons that had been urged for the bill.

A remonstrance, signed by over 300 residents of the Fifth ward, was some time since presented to me against the measure.

There is no present necessity for the bill, and as it does not, by its terms, go into effect for many purposes until next year, no harm can result if its enactment shall be postponed until that time, when the increased growth of the ward, if such growth continues, or an extension of the city limits, or other events may require its passage. The delay will better enable the desirability and necessity of the measure to be determined, and no public interest can be harmed by its taking such a course.

DAVID B. HILL.

VETO, SENATE BILL No. 137, PROVIDING FOR A  
STATE CENSUS.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *April 29, 1885.* }*To the Senate:*

Senate bill No. 137, entitled "An Act to amend chapter sixty-four of the Laws of eighteen hundred and fifty-five, entitled 'An Act in relation to the census or enumeration of the inhabitants of this State, and making an appropriation therefor,'" is herewith returned without approval.

The Constitution of the State requires that "an enumeration of the inhabitants" shall be taken every ten years. It does not require the enumeration of anything else, or the collection of any other statistical information whatever.

I am ready to approve any act or appropriation having for its sole object the fulfillment of this constitutional requirement, but it may properly be insisted that the Legislature in attempting or assuming to perform a constitutional duty, should not impose conditions or add objectionable provisions which are not contemplated by the Constitution and which place unnecessary and useless burdens upon the people.

The bill now before me is plainly open to criticism. It amends and confirms the act of 1855, under which it is proposed to take an elaborate census, containing statistics of many kinds, instead of a simple enumeration. Such a census as is contemplated by the bill which I return,

and was permitted by the Act of 1855 is not required by the Constitution, and is not now desirable or necessary. It would cost the people of the State over \$400,000, while an enumeration will cost the State at large only \$10,000, and the counties not more than \$70,000 in addition. The last State census, taken in 1875, cost the State at large \$128,037.90, and the counties \$263,034.99 additional, making a total of \$391,072.89. The information derived, aside from the ascertainment of the population, had almost no practical value. More than \$300,000 can be saved, if the Legislature shall provide only for the enumeration contemplated by the Constitution.

This present bill is, therefore, clearly objectionable.

To reiterate what has been clearly stated in previous communications, that the reasons which existed thirty years ago for the gathering of elaborate statistics by means of a census do not now exist, seems unnecessary. State bureaus have been created which are required to gather all the statistical information that it is essential for the State to collect. In addition to these sources of information, the United States census, which is most elaborate and exhaustive in its character, furnishes all that is necessary or even desirable. The collection by the State of any further statistics is a waste of money.

The discussion of this bill in the Senate developed a serious difference of opinion as to what "statistical information" was required by the act of 1855. One opinion was that it was determined by the act, construed in connection with the previous census act of 1845, while others insisted that the extent and nature of such statistics was to be determined solely by the Secretary of State.

There are unanswerable objections to either position.

The statistics required by the schedules set forth in the Act of 1845 are valueless at the present time, and should not be continued. As to the other position, whatever information it may be deemed wise by the Legislature to collect, should be declared by law, and not left to the discretion of any officer. The extent, nature and form of the inquiries should be prescribed, set forth and limited, so that the Legislature may know exactly what is being authorized, and the people may be informed what questions they are expected to answer. The suggestion has been made that it is intended to have the proposed census conform in all respects to the United States census of 1880, and that a copy of it is to be furnished to the national government, in order that the State may receive, under the United States statute, one-half of what the government in 1880 paid enumerators. This bill, however, makes no provision for any such course, and, in the absence of an express provision authorizing such a procedure, it is difficult to discover how it is to be done. Besides, it certainly is not economical for the State to take a census which will cost five times what is necessary, in order to receive from the national government in return, only one-fourth of the money expended.

The attention of the Legislature was called to the subject of a census early in January. Four suggestions were then made by the Executive :

*First.* That the census be limited to the enumeration of the inhabitants required by the Constitution.

*Second.* That in justice to the large cities, the enumeration should be postponed until autumn.

*Third.* That the appointment of the enumerators should be made by the county clerks.

*Fourth.* That the rules of the Civil Service Commission should be applied in the selection of enumerators.

The Legislature, in its wisdom, has decided not to adopt any of these recommendations. Since they were made the Attorney General has given as his opinion that the enumerators provided for in the Act of 1855 are public officials within the terms of the Civil Service Act, and must be classified. Accordingly the enumerators were classified by the Civil Service Commission and put in the competitive list. Adherence to the civil service rules would enable the most competent applicants to receive appointment, regardless of other considerations. To enable the Commission to conduct the examinations required by the rule, an appropriation of \$7,000 was asked for by the Commissioners. The consideration of this application was delayed by the Legislature, and the appropriation was at last refused. That such a course was adopted is a matter for regret, for I believe that such examinations would have secured more competent enumerators than any other method of appointment. There was ample time to hold the examinations had the appropriation been made promptly, and the refusal of the Legislature to appropriate the small sum asked for prevents the enforcement of the civil service law.

Under these circumstances it becomes more to be desired than ever that the proposed census, if taken at all, should be confined to the requirements of the Constitution.

There is ample time to perfect a bill embodying these suggestions in whole or in part, if, indeed, any of them shall seem wise to the Legislature. If a measure entirely different in character is insisted upon, it cannot be expected to meet with Executive approval.

This matter has not received from the Legislature that consideration which it deserves. The record of the proceedings of the Assembly shows that by parliamentary devices, the bill which is herewith returned, was ordered to a third reading without debate, immediately upon its receipt from the Senate, and that afterwards no discussion was permitted.

In conclusion, I desire to state plainly that any bill providing for an enumeration of the inhabitants of the State—and for that enumeration only—will be permitted to become a law, no matter by what methods, or under the supervision of what officer, the enumeration is to be taken. I am entirely willing to waive any opinions I may have upon the subject of methods, in order that the requirements of the Constitution may be met, although I firmly believe that if the suggestions made in January last were adopted, it would be for the best interests of the State.

The responsibility for any failure to carry out the constitutional provision for “an enumeration of the inhabitants,” must rest upon that branch of the Government which seeks, not to provide for “an enumeration,” but to impose upon the people a collection of statistics which is elaborate, costly and useless.

DAVID B. HILL.

DESIGNATION OF HON. MILTON H. MERWIN TO  
HOLD CIRCUIT COURT AT MORRISVILLE.STATE OF NEW YORK, }  
EXECUTIVE CHAMBER. }

It appearing to my satisfaction that the term of the Circuit Court of the Supreme Court for the Sixth Judicial District, appointed to be held in and for the county of Madison, at the court-house in the village of Morrisville, on Monday the eleventh day of May, instant, is in danger of failing ;

Now, therefore, by virtue of the power in me vested, and in accordance with the provisions of section two hundred and thirty-seven of the Code of Civil Procedure, I do hereby designate and appoint the Honorable Milton H. Merwin, a justice of the Supreme Court, to hold such Circuit Court, as hereinbefore described.

Given under my hand and the privy seal of the State,  
at the Capitol in the city of Albany, this second  
[L. s.] day of May, in the year of our Lord one thousand  
eight hundred and eighty-five.

DAVID B. HILL.

By the Governor :

WILLIAM G. RICE,

*Private Secretary.*

ORDER TO ABATE NUISANCE AT MOUNT  
VERNON, WESTCHESTER COUNTY.STATE OF NEW YORK, }  
EXECUTIVE CHAMBER. }

*Whereas*, The State Board of Health having been required by me, pursuant to law, to inquire into a certain alleged nuisance, dangerous to life and detrimental to public health, existing, as complained, in or about the village of Mount Vernon, town of Eastchester and county of Westchester; and the said State Board of Health having duly reported that such nuisance, as alleged, does exist, and is caused by the fact that a small but living stream, running through a part of the said village and town, is made and allowed to receive a filthy discharge from sewers which extend through some of the principal streets of the said village, thus rendering the said stream a foul smelling and unwholesome open sewer, to the detriment of the health and comfort of the inhabitants affected thereby; and

*Whereas*, The State Board of Health has reported that the proper remedy for the abatement of said nuisance is the building of an out-fall sewer from the mouth of the present sewage system in the said village, eastwardly to the Hutchinson creek, according to plans approved of by the said State Board of Health;

Now, therefore, I, David B. Hill, Governor of the State of New York, in accordance with the law in such case made and provided, do hereby declare the said stream in the said town of Eastchester and county of Westchester, to be a public nuisance, and I do hereby order and direct the proper authorities to abate the said nuisance forth-

with, by building an out-fall sewer from the mouth of the present sewage system in the village of Mount Vernon, town of Eastchester, and county of Westchester, eastwardly through said town to the Hutchinson creek, after the manner and according to the plans suggested by the State Board of Health, and the whole work being done under the direction of the said State Board of Health, and I do further order that the said abatement of the said public nuisance shall be completed within ninety days from the date of this order.

Given under my hand and the privy seal of the State, at the Capitol in the city of Albany, this  
[L. s.] fourth day of May in the year of our Lord, one thousand eight hundred and eighty-five.

DAVID B. HILL.

By the Governor :

WILLIAM G. RICE,

*Private Secretary.*

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ORDER DIRECTING THE SUPERVISORS, ETC., OF  
WESTCHESTER COUNTY TO ENFORCE THE  
ORDER TO ABATE THE NUISANCE AT MOUNT  
VERNON.

STATE OF NEW YORK,  
*EXECUTIVE CHAMBER.* }

*Whereas*, An order was heretofore made by me, requiring the proper authorities to abate a certain nuisance, to wit, a foul smelling and unwholesome stream in the town of Eastchester and county of Westchester, in accordance with a report heretofore made to me by the State Board of Health;

Now, therefore, I, David B. Hill, Governor of the State of New York, for the purpose of more effectually carrying out the provisions of the said order, and in accordance with chapter 322 of the Laws of 1880, as amended by chapter 308 of the Laws of 1882, do hereby require the district attorney, the sheriff and the other officers of the said county of Westchester to take all necessary measures to execute and obey the said order heretofore by me made; and I do specially require and order the board of supervisors of the said county of Westchester to meet in special session within thirty days from the date hereof, and to take immediate steps to abate the said public nuisance according to law and according to the plans suggested by the State Board of Health, and under the direction of the said State Board of Health, and not later than ninety days from the date of this order.

Given under my hand and the privy seal of the State,  
at the Capitol in the city of Albany, this fifth  
[L. s.] day of May in the year of our Lord one thousand  
eight hundred and eighty-five.

DAVID B. HILL.

By the Governor :

WILLIAM G. RICE,

*Private Secretary.*

ORDER TO THE SHERIFF IN THE MATTER OF  
THE NUISANCE AT MOUNT VERNON.STATE OF NEW YORK, }  
EXECUTIVE CHAMBER. }*To the Sheriff of the County of Westchester :*

You are hereby ordered and directed to make due and personal service of the order this day issued by me in the matter of the public nuisance existing in the village of Mount Vernon, in the town of Eastchester and county of Westchester, and also of the prior order in the same matter, dated the fourth day of May, 1885, upon each and every the supervisors of the said county of Westchester, and upon the clerk of such supervisors, and also upon the district attorney, the cost of such service as above directed to be a charge upon the said county of Westchester. Such service to be made within ten days from the date hereof.

Done at the Capitol in the city of Albany, this  
[L. s.] fifth day of May, A. D. 1885.

DAVID B. HILL.

By the Governor :

WILLIAM G. RICE,

*Private Secretary.*

VETO, ITEMS IN ASSEMBLY BILL No. 156. THE  
APPROPRIATION BILL.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 8, 1885. }

*To the Assembly :*

A copy of a statement of objections to several items contained in Assembly bill No. 156, entitled "An Act making appropriations for the support of Government," is herewith respectfully transmitted, the statement having been appended to the bill at the time of its approval, pursuant to the provisions of the ninth section of article four of the Constitution.

DAVID B. HILL.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 8, 1885. }

*Statement of items of appropriation objected to and not approved, contained in Assembly bill No. 156, entitled "An Act making appropriations for the support of Government."*

The several items herein enumerated, contained in Assembly bill No. 156, entitled "An Act making appropriations for the support of Government," are objected to and not approved, for the reasons hereinafter stated :

"For the Secretary of the Regents of the University, for salary, five thousand dollars."

This item is objected to and not approved.

The salary paid for several years to this official has been thirty-five hundred dollars. The increase of fifteen hundred dollars proposed to be made by this item of

appropriation is not justified either by the method of legislation employed or the circumstances surrounding it. In the judgment of the Executive the appropriation bill should merely provide for the fixed charges upon the State as established by law.

If, for any reason, it is deemed necessary by the Legislature to increase the salary of any public servant, it should be done, not by increasing the amount of the item in the appropriation bill for that purpose, but by separate enactment. Such a course would permit the Executive to pass upon the merits of the increase, without being called upon, as in the present case, to veto the entire salary, and thus render necessary a supplementary bill in order that any compensation for the services rendered may be received.

The propriety of increasing the salaries of State officials is not here passed upon, further than to say that, at a time when commercial depression has not only forbidden increase of salaries in private enterprise, but, in very many instances, has rendered necessary a reduction of wages, it would seem that the State does not wisely enter upon a course which is not in accordance with approved business methods.

“ For the assistant secretary of the Regents of the University, for salary, three thousand dollars.”

“ For the deputy superintendent of Public Instruction, for salary, four thousand dollars”

“ For messenger to the clerk of the Court of Appeals, for salary, one thousand dollars.”

The increase of one thousand dollars proposed in the salary of the assistant secretary of the Regents of the University, of five hundred dollars in the salary of the deputy superintendent of Public Instruction, and of two hundred dollars in the salary of the messenger to the clerk

of the Court of Appeals are objected to, and not approved, for the reasons already stated in the memorandum in regard to the increase of the salary of the secretary of the Regents of the University.

“For the Commissioners of the State Survey to prosecute the work of making a topographical map of the State in accordance with their last report to the Legislature, the sum of twenty-five thousand dollars.”

This item is objected to and not approved.

This appropriation is made in partial compliance with the recommendations of the Commissioners of the State Survey in their recent report to the Legislature. These recommendations proposed, among other things, an expenditure of forty thousand dollars per annum for topographical maps and surveys whereby such maps and surveys could be made each year of from three to five counties of the State. The total estimated cost of the work is, therefore, over five hundred thousand dollars.

The experience of the State in other projects upon which it has embarked, shows that the amount actually required to carry to completion such a scheme, would, in all probability, be largely increased and possibly doubled.

There has already been expended by the State upon the work of this survey the sum of one hundred and eighteen thousand three hundred dollars. While not intending to depreciate the work of the Commission, it may be safely asserted that the practical results of the work thus far have not been proportionate to its cost.

At an expenditure of twenty-five thousand dollars a year—the sum by this item appropriated—the work cannot be completed in less than twenty years, and I am convinced that before such a vast work shall be entered upon by the State, a plan of procedure should be carefully form-

ulated by the Legislature, and definitely decided upon. Such a plan should be contained in a separate enactment, and not in the appropriation bill. The act creating the commission is indefinite and the subsequent legislation—almost entirely found in appropriation bills—concerning it, is variable and illy digested.

The appropriation now under consideration is not available for any purposes until the first of October next, and practically not available for the work proposed until one year from the present time. It will, therefore, do no harm to wait another year, when legislation upon this subject can be better considered.

In view of the fact stated, I am unable to consent to an appropriation of twenty-five thousand dollars, which appears to be the entering wedge for an expenditure of nearly one million dollars.

“For the prosecution of the surveys in the northern district of the State, in accordance with the provisions of chapter 499 of the Laws of 1883, twenty-five thousand dollars, and the Superintendent of said surveys is hereby authorized and directed to locate and monument such county, town and boundary lines as may require survey, and to extend the topographical work over such portions of the counties under survey as may be necessary to an accurate map of the same.”

This item is objected to and not approved.

The character of the work which may be necessary to be done in the Adirondack region is such that it can be performed under the direction of the State Engineer and Surveyor, and he is the proper officer to have charge of it.

The sum of seventy-seven thousand two hundred and seventy-five dollars has already been expended in this surveying work, with inadequate results, and before re-entering upon the undertaking a carefully prepared plan should be perfected and enacted by the Legislature.

The office of the State Engineer and Surveyor is created by the Constitution, and it is made his duty by law to superintend the surveys of lands belonging to the people of the State. The Commissioners of the Land Office, who have the custody and control of these lands, have power to cause whatever surveys are necessary. Either the office of State Engineer and Surveyor should be abolished, or he should be permitted to perform the duties which properly pertain to the position. The creation or the continuance of separate bureaus, at a large expense, should be avoided where the duties conferred upon the bureaus can be performed by State officials, created by the Constitution.

“For the Commissioners of Fisheries to be expended as they may deem proper, upon vouchers to be approved by the Comptroller, for the purpose of replenishing the lakes, rivers and other waters of this State with fish, as provided in chapter 285 of the Laws of 1868, chapter 567 of the Laws of 1870, chapter 74 of the Laws of 1873, chapter 523 of the Laws of 1875 and chapter 309 of the Laws of 1879, twenty-six thousand dollars; of which sum the Commissioners are hereby directed to expend two thousand five hundred dollars in stocking Lake Ontario with pike, white fish and salmon trout, and one thousand dollars in stocking the St. Lawrence river with black bass and California trout.”

This item is objected to and not approved, for the reason that in the last clause the Commissioners are directed to expend three thousand five hundred dollars in stocking Lake Ontario and the St. Lawrence river. The high character and fitness of the Commissioners are well-known, and the Legislature has very properly recognized these qualities in appropriating twenty-two thousand five hundred dollars to be expended as they may deem proper. I see no reason why they should be “directed” to stock this mighty lake and river, half the waters of which belong to a foreign government, even though they may deem it useless. They are the best judges of the needs of the

State and should be permitted to expend the money untrammelled. If, in their judgment, waters can and should be stocked, I doubt not they will attend to the matter.

The principle of directing expert officials how to expend money appropriated for their uses, I believe to be wrong, and should not be countenanced even in so small a matter as this. The Fish Commissioners should receive all the money the public needs demand, and they should expend it as they deem proper.

DAVID B. HILL.

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VETO, ASSEMBLY BILL No. 374, RELATING TO  
RECORDING NOTICES OF PENDENCY OF ACTION.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 8, 1885. }

*To the Assembly :*

Assembly bill, No. 374, entitled "An Act to authorize and direct the county clerks of Genesee, Westchester, Oneida, Columbia and Orleans counties to record certain notices of pendency of action, now on file in the county clerk's offices of Genesee, Westchester, Oneida, Columbia and Orleans counties, and to prepare suitable indexes to the records of notices of pendency of action in said offices," is herewith returned without approval.

This bill is similar in its character to Senate bill No. 62, which was last week returned to the Senate without approval.

The reasons given for the action in regard to the Senate bill, apply with equal force to the one herewith returned.

The bill is, without doubt, a scheme for the financial benefit of the county clerks of the counties named in the bill, and is not designed to subserve any real public interest.

There is no pressing necessity that these old notices, which were filed over twenty years ago, should now be recorded at all, or, at least, not at the expense of the county. Litigants and other persons interested in them can, under existing provisions of law, have these notices recorded at their own expense, if they so desire. No good reason exists why the taxpayers of the respective counties named in this bill should pay for the recording of these notices, when such recording is merely for the benefit of the parties interested.

The boards of supervisors of the said counties have ample power and authority to authorize this work to be done at the expense of the taxpayers, if, for any reason, there may arise any necessity for it. Such legislation as this should be remitted to the local authorities for such action as they may deem wise. The people who are to pay the expense of the work proposed to be done should have the right to pass upon its necessity and propriety, by their immediate local representatives in the boards of supervisors.

DAVID B. HILL.

VETO, ASSEMBLY BILL No. 331, AMENDING THE  
CHARTER OF NEWBURGH.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 11, 1885. }

*To the Assembly:*

Assembly bill No. 331, entitled "An Act to amend chapter 541 of the Laws of 1865, entitled 'An Act to incorporate the city of Newburgh and the several acts amendatory thereof,'" is herewith returned without approval.

The principal amendment contained in this bill provides for increasing the amount which the city of Newburgh is authorized to raise annually for contingent expenses from thirty thousand dollars to thirty-seven thousand five hundred dollars.

This amendment has not been submitted to the taxpayers of Newburgh, and it is doubtful whether it is approved by them. In fact, the documents which have been laid before me, upon the public hearing had upon the bill, tend to show that a large majority of the taxpayers are emphatically opposed to it. If it does not meet the approval of the taxpayers of Newburgh, it ought not to become a law. If it is not clear that a majority favor it, it is better that its enactment be delayed until its wisdom and propriety may be more apparent to those who are immediately interested in the welfare and progress of the city.

Besides, it does not conclusively appear that any increase of the contingent fund of the city is absolutely necessary. With the exception of the last two years, it is shown that during the last ten consecutive years the total amount

levied, was nineteen thousand three hundred and sixty-four dollars and sixty-one cents less than the amount provided for under the existing thirty thousand-dollar clause, and that during the same period the amount paid out of the contingent fund was sixteen thousand two hundred and eighty-five dollars and seventy cents less than the amount paid into it. The increase of the expenditures during the last two years appears to have been exceptional in its character and does not furnish a safe criterion by which to judge of the amount which should ordinarily be properly expended.

The restrictions upon the tax imposing power of our cities should not be removed unless the necessity is urgent. The tendency of the times is toward increased municipal expenditures, rather than toward economy and retrenchment, and every safeguard that can reasonably be afforded the taxpayers should be preserved. The power to levy a larger contingent fund furnishes increased opportunities for doubtful expenditures, greater facilities for raising salaries as well as multiplying officials, and must almost inevitably lead to higher taxation.

The common council of Newburgh are not without remedy in case it is desired to expend in any one year, for any proper purpose, a greater sum than thirty thousand dollars for contingent expenses. The charter provides the simple method of calling a special meeting of the taxpayers and submitting the question to their decision. If the object of the expenditure is a laudable and proper one, the people will readily approve it.

This power is ample and sufficient, and enables the local municipal authorities to meet all the proper needs of the city government, while, at the same time, the people have

an opportunity to decide for themselves as to the propriety of the additional expenditures. It is therefore difficult to discover any present necessity for any additional power being conferred upon the common council, especially under the circumstances shown as to the sentiment of the people towards this measure.

It is claimed that the citizens' committee, composed of some of the best and most prominent citizens of Newburgh, appointed to oppose this bill, were not afforded such ample notice and fair opportunity to be heard in opposition to the bill before the committees of one or both of the houses of the Legislature as they desired and to which they were reasonably entitled. This is to be regretted, but it more strongly imposes upon the Executive the duty of a more careful consideration of this measure and of seeing to it that the interests represented by such committee are now fully protected.

After a full and fair hearing had before me in which I have patiently heard all that the friends and opponents of the bill desired to present, I am not convinced that the best interests of the city will be promoted by the proposed amendment becoming a law at the present time. It is possible that the growth of the city or the demand for local improvements may be so great, or other circumstances may arise such as to render this legislation advisable in the near future, but it is not expedient to anticipate these events by premature action. A wiser economy will be exercised by the servants of the city if the revenues of the corporation are barely sufficient to meet its reasonable demands than if they are abundant or excessive. There is always danger of extravagance on the part of municipal authorities if a surplus revenue is at their command or

they have the sole power to create it by taxation beyond a reasonable limitation.

If it be true that the expenditures of the city during its present administration have been extravagant, thereby incurring the disapproval and losing the confidence of the citizens, it shows the propriety of not increasing the amount which such administration or its successors, similarly disposed, may legally raise by taxation upon the property of the taxpayers.

The citizens have the right, during the present depressed financial condition of the country, to insist upon the strictest economy and the greatest possible retrenchment, consistent with the successful conduct of the affairs of the city, and believing that such results can better be attained by permitting the present limitation in the city charter to remain where it is, the proposed amendment thereto is not approved.

DAVID B. HILL.

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VETO, ASSEMBLY BILL No. 320, TO LEGALIZE  
ACTS OF SUPERVISORS OF CHAUTAUQUA  
COUNTY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 12, 1885. }

*To the Assembly :*

Assembly bill No. 320, entitled "An Act to legalize and ratify certain local laws passed by the board of supervisors of Chautauqua county," is herewith returned without approval.

This bill proposes to legalize chapter two of certain

local laws passed by the board of supervisors of Chautauqua county, relating to fishing in the waters of Lake Erie, which are claimed to be in conflict with existing laws of the State of New York upon the same subject.

As two counties border upon Lake Erie, it is important that the laws relating to fishing in the waters thereof should be uniform, and it ought not to be attempted to regulate them by the local laws of either of such counties. It would be different if Lake Erie were embraced in a single county, but situated as it is, it is clear that the rules relative to fishing in the waters of that lake should be made by the Legislature of the State.

If the board of supervisors of Chautauqua county have passed any laws upon this subject which conflict with the existing laws of the State, the former should not stand, and no good reason exists why they should be legalized.

The act does not point out the precise respects in which the local laws passed by the supervisors are claimed to be not in accord with the general laws of the State, and the game and fish laws are now sufficiently numerous and conflicting, without being further complicated by such legislation as this. I cannot learn that the act is desired by the people of Chautauqua county who are interested in the proper preservation of fish.

DAVID B. HILL.

VETO, ASSEMBLY BILL No. 504, MAKING A UNION  
FREE SCHOOL DISTRICT IN DUNKIRK.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 13, 1885. }

*To the Assembly :*

Assembly bill No. 504, entitled "An Act to amend chapter thirty-four of the Laws of eighteen hundred and fifty-eight, entitled 'An Act to make school district number nine in the town of Pomfret a union free school district,'" is herewith returned without approval.

This act affects the city of Dunkirk. It is not desired by the common council of that city. The board of education have not petitioned for it; but, on the contrary, are opposed to it. The citizens of Dunkirk do not want it.

Under such circumstances it ought not to become a law.

DAVID B. HILL.

THE CIVIL SERVICE.—CLASSIFICATION OF  
SANITARY INSPECTORS.

STATE OF NEW YORK,

OFFICE OF CIVIL SERVICE COMMISSION. }

At a meeting of the Civil Service Commission, held at the Capitol in the city of Albany on April 1, 1885, it was

*Resolved*, That sanitary inspectors appointed or employed under the general health acts be and hereby are included in Class II, and under the provisions of the fourth Rule, enrolled in Schedule D.

Attest : CLARENCE B. ANGLE, *Secretary*.

Approved, May 13, 1885.

DAVID B. HILL, *Governor*.

SPECIAL MESSAGE CONCERNING PROCEDURE IN  
CAPITAL CASES.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 13, 1885. }

*To the Legislature :*

The Constitution directs the Executive to recommend to the Legislature such matters as he shall judge expedient. In accordance with this provision of that instrument, I desire to call attention to the condition of the laws for the punishment of crime where the penalty is death, and to recommend some changes which, it seems to me, would result in greater respect for law and swifter punishment for murder. The long delay which in almost every instance elapses between the original sentence of death and the execution of the criminal, has for many years been a scandal upon our system of criminal law, and recent changes in the statutes have resulted in aggravating that scandal. As the law stands at present, two appeals are not only possible, but usually resorted to in every case, one to the General Term of the Supreme Court, and, if the judgment is affirmed, a further one to the Court of Appeals. It is further provided that the day of execution must be not less than four, nor more than eight weeks after the sentence, and it has recently been enacted that the mere serving of a notice of appeal by the defendant's attorney upon the designated officers at any moment before the time set for execution, acts as a stay of proceedings. Thus it has come to pass that a criminal may be convicted and sentenced to death eight weeks after he is found guilty. Upon the day set for exe-

cution, his attorney may serve a notice of appeal, which prevents the execution. The appeal is heard at the General Term, which may not sit until after an interval of several months. The judgment may be affirmed by the General Term and a second sentence of death may be passed upon the defendant, to be inflicted after a lapse of eight weeks. Upon the day set for execution, the defendant's attorney may serve another notice of appeal, which acts as a stay of proceedings as did the first, and after another interval of several months the case reaches the Court of Appeals, when, if the judgment is affirmed, a third sentence is pronounced, and at last the criminal is brought to justice. However strenuously the district attorney may labor to have swift justice meted out to murderers, the law itself makes this an impossibility, and intervals of one or two years between conviction and punishment are the rule, and not the exception.

That whatever merit there may be in capital punishment is almost entirely lost by delay, is disputed by none, and the public discontent with the results of the present system is great and growing. With a view of providing a remedy for this evil, I requested the Attorney General to prepare a bill amending the Code of Criminal Procedure so as to avoid the present delays, and a bill to this end, drafted by him, is submitted herewith.

The method of procedure which I recommend makes the appeal direct from the Court of Oyer and Terminer to the Court of Appeals, when the judgment is death. The judgment-roll and the stenographer's minutes are made the case and exceptions, and the expense of printing is made a county charge. If these changes in the law are made, not only will the present protracted delay in the punishment of

the guilty be avoided, and a great expense to the county be saved, but the poor, as well as the rich, will be enabled to have their cases passed upon by the court of last resort.

I trust that the Legislature, before its adjournment, will see fit to put this, or a law similar in effect, upon the statute books. It is necessary that some legislation should be enacted to do away, as far as possible, with the present protracted delay in the punishment of murder.

DAVID B. HILL.

SUGGESTED AMENDMENTS TO THE CODE OF CRIMINAL PROCEDURE, ACCOMPANYING SPECIAL MESSAGE OF MAY 13, 1885.

AN ACT TO AMEND CERTAIN SECTIONS OF THE CODE OF CRIMINAL PROCEDURE.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows :*

SECTION 1. Section four hundred and eighty-five of the Code of Criminal Procedure is amended so as to read as follows :

§ 485. When judgment upon a conviction is rendered, the clerk must enter the same upon the minutes, stating briefly the offense for which the conviction has been had ; and must, upon the service upon him of notice of appeal, immediately annex together and file the following papers, which constitute the judgment-roll :

1. A copy of the minutes of a challenge interposed by the defendant to a grand juror, and the proceedings and decision thereon ;

2. The indictment and a copy of the minutes of the plea or demurrer ;

3. A copy of the minutes of a challenge, which may have been interposed to the panel of the trial jury, or to a juror who participated in the verdict, and the proceedings and decision thereon ;

4. A copy of the minutes of the trial ;

5. A copy of the minutes of the judgment ;
6. A copy of the minutes of any proceedings upon a motion either for a new trial or in arrest of judgment ;
7. The bill of exceptions, if there be one ;
8. When the judgment is of death, the clerk, in addition to the foregoing, must forthwith cause to be prepared and printed the number of copies of the stenographer's minutes and judgment-roll, which are required by the rules of the Court of Appeals, which shall form the case and exceptions upon which the appeal shall be heard, and three copies shall also be furnished to the defendant's attorney and three to the district attorney and one to the Governor of the State, and the remainder distributed according to the rules of the Court of Appeals. The expense of preparing and printing of the minutes and judgment-roll shall be a county charge, payable out of the court funds upon the certificate of the county clerk approved by the county judge of the county in which the conviction was had.

Section five hundred and three is amended so as to read as follows :

§ 503. Whenever, for any reason, other than insanity or pregnancy, a defendant, sentenced to the punishment of death, has not been executed pursuant to the sentence, at the time specified thereby, and the sentence or judgment inflicting the punishment stands in full force, the Court of Appeals, or a justice thereof, or the Supreme Court, or a justice thereof, upon application by the Attorney General, or the district attorney of the county where the conviction was had, must make an order directed to the sheriff, commanding him to bring the convict before the Court of Appeals, or a General Term of the Supreme Court in the department, or a term of a Court of Oyer and Terminer in the county where the conviction was had. If the defendant be at large, a warrant may be issued by the Court of Appeals, or a justice thereof, or by the Supreme Court, or a justice thereof, directing any sheriff or other officer to bring the defendant before the Court of Appeals, or the Supreme

Court at the General Term thereof, or before a term of the Court of Oyer and Terminer in that county.

Section five hundred and seventeen is amended to read as follows :

§ 517. An appeal to the Supreme Court may be taken by the defendant from the judgment on a conviction after indictment, except that when the judgment is of death the appeal must be taken direct to the Court of Appeals, and, upon the appeal, any actual decision of the court in an intermediate order or proceeding forming a part of the judgment-roll, as prescribed by section four hundred and eighty-five, may be reviewed.

Section five hundred and twenty-seven is amended so as to read as follows :

§ 527. An appeal to the Supreme Court from a judgment of conviction or other determination from which an appeal can be taken, stays the execution of the judgment or determination upon filing with the notice of appeal a certificate of the judge who presided at the trial, or of a judge of the Supreme Court, that in his opinion there is reasonable doubt whether the judgment should stand, but not otherwise. And the appellate court may order a new trial, if it be satisfied that the verdict against the prisoner was against the weight of evidence or against law, or that justice requires a new trial, whether any exception shall have been taken or not in the court below.

Section five hundred and twenty-eight is amended so as to read as follows :

§ 528. An appeal to the Court of Appeals, from a judgment of the Supreme Court, affirming a judgment of conviction, stays the execution of the judgment appealed from, upon filing with the notice of appeal a certificate of a judge of the Court of Appeals, or of the Supreme Court, that in his opinion there is reasonable doubt whether the judgment should stand, but not otherwise, except that when the judgment is of death the appeal stays the execution, of course, until the determination of the appeal. When the judgment is of death, the Court

of Appeals may order a new trial if it be satisfied that the verdict was against the weight of evidence or against law, or that justice requires a new trial, whether any exceptions shall have been taken or not in the court below.

Section five hundred and thirty-eight is amended so as to read as follows :

§ 538. When the appeal is called for argument, the appellant must furnish the court with copies of the notice of appeal and judgment-roll, except where the judgment is of death. If he fail so to do, the appeal must be dismissed, unless the court otherwise direct.

§ 2. The amendments herein shall not affect any appeal taken to and pending in the Supreme Court or Court of Appeals at the time this act shall become a law.

§ 3. This act shall take effect immediately.

VETO, ASSEMBLY BILL No. 344, TO INCREASE THE  
SALARY OF THE STENOGRAPHER TO THE SUR-  
ROGATE OF NEW YORK.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

*To the Assembly :*

ALBANY, May 14, 1885. }

Assembly bill No. 344, entitled "An Act in relation to the compensation of the stenographer of the Surrogate's Court of the county of New York," is herewith returned without approval.

This bill increases the salary of the stenographer of this court from three thousand to four thousand five hundred dollars.

At the time of the passage of the "public burdens act," in 1880, an act intended to relieve the city of New York from the extravagances which had come to prevail through

careless or corrupt administration, the salary of this officer was three thousand dollars. I see no reason why it should be increased at the present time, especially as I am informed that this officer, in addition to his salary, has a further income of several thousands of dollars, arising from his connection with the office.

From stenographers of other courts in New York city I have received communications protesting against this increase, for the reason that it makes the salary of this official out of proportion to that of other stenographers having equal work to do.

At a time when one branch of the Legislature has deemed it its duty to investigate the affairs of the city of New York, for the alleged reason that the expenses of the city have, of late, unduly increased, it would seem to be thoroughly inconsistent to enact a law which increases by one-half the salary of an official of that very city. It is by legislation such as this, enacted during a long series of years, not in response to public needs, but in compliance with the personal importunities of interested officials, that a large share of the burdens, now complained of, have come into existence.

It is suggested that if there were less legislative investigation into the burdens of the taxpayers of the city of New York, and more reduction of those burdens, the welfare of the citizens of the metropolis would be promoted.

The reasons given in former messages for not approving of increases in salaries at the present time, apply pertinently to this case. The people's money should be expended, not carelessly and extravagantly, but carefully and prudently.

DAVID B. HILL.

## THE CIVIL SERVICE.—CLASSIFICATION OF INSURANCE EXAMINERS.

STATE OF NEW YORK,  
*OFFICE OF THE CIVIL SERVICE COMMISSION.* }

*Resolved*, That special examiners or appraisers appointed by the Superintendent of the Insurance Department, under the provisions of chapter 593 of the Laws of 1873, and not employed as regular clerks, are hereby classified in subdivision II, of Class I of the classified service, and, under the provisions of the fourth rule, enrolled in Schedule A.

Adopted, May 12, 1885.

CLARENCE B. ANGLE, *Secretary.*

Approved, May 15, 1885.

DAVID B. HILL, *Governor.*

## SPECIAL MESSAGE. — ENUMERATION AND APPORTIONMENT.

STATE OF NEW YORK.

*EXECUTIVE CHAMBER,*  
ALBANY, *May 15, 1885.* }

*To the Legislature :*

I am informed by the respective committees of the Senate and Assembly, that the Legislature, having completed its business, is now ready to adjourn without date.

Section four of article three of the Constitution provides that "An enumeration of the inhabitants of the State shall be taken under the direction of the Legislature in

the year one thousand eight hundred and fifty-five, and at the end of every ten years thereafter." Such an enumeration is declared to be for the purpose of providing a basis of apportionment so that each Senate district shall contain as nearly as may be an equal number of inhabitants, and so that the members of Assembly as nearly as may be shall be apportioned among the several counties of the State.

This plain duty, imposed by the Constitution, of providing for a simple enumeration of the inhabitants and that alone, has been neglected by the Legislature of 1885, I now urge that you do not finally adjourn without passing a bill providing for such an enumeration as will secure to the people of the State their inherent, as well as constitutional right of just representation.

DAVID B. HILL.

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PROCLAMATION, CONVENING AN EXTRAORDINARY SESSION OF THE LEGISLATURE.

STATE OF NEW YORK, }  
EXECUTIVE CHAMBER. }

Pursuant to the power vested in me by that part of section 4 of article IV of the Constitution, which reads as follows: "The Governor shall have power to convene the Legislature on extraordinary occasions. At extraordinary sessions no subject shall be acted upon, except such as the Governor may recommend for consideration," I hereby convene the Legislature in extraordinary session, at the Capitol in the city of Albany, on the fifteenth day of May, instant, at four o'clock in the afternoon.

And I hereby recommend for the consideration of the Legislature of 1885, in extraordinary session convened, such legislation, and such legislation only, as is required to carry into effect that part of section 4 of article III of the Constitution, which reads as follows: "An enumeration of the inhabitants shall be taken, under the direction of the Legislature, in the year one thousand eight hundred and fifty-five, and at the end of every ten years thereafter," which enumeration it is declared is to be taken in order to secure an equitable apportionment of Senators and Members of Assembly for the several counties of the State.

Done at the Capitol in the city of Albany, this  
[L. s.] fifteenth day of May, in the year of our Lord  
one thousand eight hundred and eighty-five.

DAVID B. HILL.

By the Governor:

WILLIAM G. RICE,  
*Private Secretary.*

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SPECIAL MESSAGE, RECOMMENDING LEGISLA-  
TION TO PROVIDE FOR AN ENUMERATION OF  
THE INHABITANTS OF THE STATE.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 15, 1885. }

*To the Legislature:*

Pursuant to the power vested in me by section 4 of article IV of the Constitution, you have been convened in extraordinary session.

For your consideration I recommend such legislation, and such legislation only, as is required to carry into effect that part of section 4 of article III of the Constitution, which reads as follows: "An enumeration of the inhabitants shall be taken, under the direction of the Legislature, in the year one thousand eight hundred and fifty-five, and at the end of every ten years thereafter."

The Constitution does not require a census. It does require an enumeration of the inhabitants.

The bill providing for such an enumeration can be perfected and passed in a few hours, if the Legislature is so disposed.

DAVID B. HILL.

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MEMORANDUM FILED WITH ASSEMBLY BILL  
No. 520 (THE CAPITOL APPROPRIATION BILL).  
APPROVED.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, *May 23, 1885.* }

Memorandum filed with Assembly bill No. 520, entitled "An Act making an appropriation for continuing work on the Capitol, constituting a Board of Advisory Commissioners of the Capitol, and regulating the number of persons to be employed on the work." Approved.

This bill is approved, although almost every detail of the measure meets with my strong disapprobation. Under the circumstances, an explanation seems to be appropriate.

That portion of the bill which makes an appropriation for the construction of the Capitol is eminently proper. The sum appropriated, and more, is absolutely necessary

for the diligent and economical prosecution of the work. Commissioner Perry requested an appropriation of one million four hundred and fifty thousand dollars, alleging that such sum could be judiciously and properly expended during this year, and was essential for continuing in employment the present efficient force of workmen. The Legislature, in its superior wisdom, denied such application, although it well knew that a less sum was wholly insufficient to retain the present organized force in employment longer than for a few months after making the necessary payments for materials, which will consume at least two-fifths of the appropriation. The effect of such action will necessitate a great reduction of the force, and the entire discharge of the workmen in the early fall.

That such effect was intended and deliberately planned is clearly evident. Such procedure is not only false economy, but it is unjust to the workingmen who, having anticipated steady employment here, have made no arrangements for work elsewhere.

The Legislature was deaf to all appeals for an increased appropriation, and upon that body alone must rest the responsibility of a reduction of the force and the stoppage of the work in the near future.

Had the best interests of the State alone been consulted, the Legislature would have granted the amount requested by Commissioner Perry; but other considerations, of a purely partisan nature, seem to have dictated the policy and controlled the action of the Legislature.

The portion of the bill which provides for an "advisory" commission to "advise" Commissioner Perry in reference to the work, is very objectionable.

A commission was wholly unnecessary. The present

commissioner is conceded to be an honest and competent builder, and no solid reason exists why he should not continue to be vested with the sole power of construction.

Former commissions have proved expensive, useless and unsatisfactory, and were latterly designed for the accomplishment of partisan purposes.

The work has progressed honestly and rapidly under Mr. Perry, and he has never used his position for political purposes. No complaints have been made against him—no charges are presented—the Legislature refused to investigate his administration, and yet insisted upon placing over him a commission of State officials.

Under such circumstances it is the height of folly to establish such a commission. Three of the officials constituting the commission are lawyers—the fourth is a merchant and by the terms of this bill they are put over a practical builder and architect of high character and reputation both for capacity and integrity to “advise” him what to do in the construction of the Capitol.

The proposition is so absurd and ridiculous that it is not embraced in a separate enactment, but is attached to the Capitol appropriation at the very close of the session, in order to force its approval by the Executive. It should be stated that the bill, as first introduced, contemplated a partisan Commission for the avowed purpose of controlling and dictating the employment of the men and making Mr. Perry a mere servant of the majority; but an enlightened and aroused public sentiment compelled an abandonment of the project, and it resulted in the present measure, which is a mere shadow of the bill as first presented. The purpose of the measure having been discarded, the measure itself should have been abandoned.

The Commission as constituted under this bill is merely a figurehead, with no power for good, and with but a little for evil. It can, if it is so disposed, embarrass and annoy the commissioner—nothing more. It becomes a useless, unnecessary and ornamental body, and should never have been created.

The bill is otherwise objectionable.

The Legislature, while professing the greatest confidence in Commissioner Perry, enacted that he should not appoint a deputy, thus interfering with a matter that should properly have been left to his own discretion and good judgment.

If this provision was intended to reach the individual now occupying the position, whom the majority of the Legislature fancied was politically obnoxious to it, the more manly and courageous course would have been to have mentioned him by name and forbidden his employment, rather than thus to attack him covertly and indirectly, without investigation or opportunity for him to be heard, by depriving his superior officer of the usual and ordinary power which every public official should possess, of appointing a deputy of his own choice to relieve him during his absence, sickness or other emergency.

The bill contains many other unnecessary provisions, which are not specially objectionable, but which seem to have been inserted simply as an excuse for having some legislation.

There was absolutely no necessity for anything except an appropriation, and these provisions referred to were evidently inserted to cover retreat after the project for a partisan commission had been forced to be abandoned.

The bill is also a bundle of absurdities.

It not only provides for an advisory body to "advise" Mr. Perry, in reference to the construction of the Capitol, but it then proceeds to "advise" and direct the Advisory Commission in reference to the same subject, expressly limiting the work to the interior of the building, and by restricting its powers in many other respects, thus usurping the natural and ordinary functions which belong to an advisory board, and manifesting a lack of confidence in the ability and capacity of the very board which it creates.

It would seem as though the commission, if it were proper to be created at all, might have been permitted to discharge its duties as seemed wise to its members, uncontrolled by legislative advice and restrictions.

The work should not have been restricted to the interior. The approaches in front of the building should have been completed this year so that the Capitol Park could be laid out, graded and embellished, and thereby have prevented the disgraceful and incomplete appearance which it now presents.

Notwithstanding these many objections to the provisions of this bill, I affix to it my signature. Rather than be the cause of delaying the completion of the Capitol and of depriving worthy workmen of employment on a great public work at a time when private capital is timid, I sign a measure made up almost entirely of crudities and absurdities, trusting that another Legislature, acting with a higher regard for public interest than the present one, will promptly repeal its obnoxious provisions.

DAVID B. HILL.

VETO, SENATE BILL, NOT PRINTED, PROVIDING  
FOR THE TAKING OF A CENSUS.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, May 27, 1885. }

*Memorandum filed with Senate bill, entitled "An Act to amend chapter sixty-four of the Laws of eighteen hundred and fifty-five, entitled 'An Act in relation to the census or enumeration of the inhabitants of this State,' as amended by chapter one hundred and eighty-one of the Laws of eighteen hundred and fifty-five, chapter thirty-four of the Laws of eighteen hundred and sixty-five and chapter forty of the Laws of eighteen hundred and seventy-five, and making an appropriation therefor." Not approved.*

The approval of this bill will compel an expenditure of over four hundred thousand dollars of the people's money. This in itself is no ground for its rejection, provided its enactment is lawful and its provisions meritorious.

It is conceded that this measure contemplates and authorizes not only an "enumeration" of the inhabitants of this State, but in addition a census as elaborate and extensive as the federal census of 1880. The power of the Legislature to pass such a measure at a regular session is not disputed, but the question is presented whether it had such power at its recent extraordinary session under the circumstances under which it was convened. The Constitution (art. 4, sec. 4) provides that the Executive may convene the Legislature in extraordinary session, and at such session "no subject shall be acted upon except such as the Governor may recommend for consideration." The

subject recommended for consideration at the late session was "such legislation, and such legislation only, as is required to carry into effect that part of section 4 of article 3 of the Constitution," requiring an enumeration of the inhabitants, which the Constitution declares is to be taken in order to secure an equitable apportionment of Senators and Members of Assembly for the several counties of the State.

A compliance with this provision of the Constitution was an easy matter. The restriction imposed by the Executive upon the action of the Legislature is the restriction of the Constitution itself, which does not demand a census but does require an enumeration. The Legislature had no power, at its extraordinary session, to consider or pass any measure not clearly embraced within the recommendation of the Executive, and which did not exclude every other distinct subject. To a measure providing for an enumeration of the inhabitants it could not attach a provision for the education, support or punishment of such inhabitants, the collection of canal or prison statistics, an appropriation for the canals or prisons, or any other separate and independent subject not directly connected with the object and purpose of the enumeration as declared in the Constitution itself. The Constitution requires an apportionment of the State into Congressional districts, and if the duty of such apportionment had been neglected by the Legislature, and it had been convened in extraordinary session for the enactment of "such legislation, and such legislation only," as was necessary to fulfill that constitutional requirement, it would scarcely be seriously contended that to a measure providing for such apportionment there could constitutionally be included an appropriation for the

Capitol, provision for the National Guard or any other distinct legislation. It is equally clear that to the present measure providing for an enumeration there cannot be added provisions for an elaborate and costly census, not necessary for such enumeration, nor in any manner connected with the purpose and object thereof, nor contemplated by the Constitution itself. I am sustained in this view by the opinion of the Attorney General as well as that of several eminent lawyers, whose advice I have sought upon this question. The Legislature might have refused arbitrarily to act at all, at the extraordinary session, but having assumed to proceed it was bound to confine its action to such legislation, and that only as was necessary to the performance of its constitutional duty. In its studied effort to evade this plain duty by adding irrelevant features it has made the bill clearly unconstitutional, and has deliberately and unnecessarily rendered approval of its legislation impossible.

The bill is objectionable in other respects. It has been asserted that this measure does not materially change the law of 1855, which was the last general act in regard to this subject. The assertion is incorrect. The bill contains vital and radical changes, rendering the defective act of 1855 more objectionable than before, unfair in its discrimination, as well as cumbersome and expensive in its execution.

*First.* It changes the date for the taking of the census from June to July. This modification is unjust to the large cities of the State, a considerable portion of whose population is absent during that month. The injustice is so manifest, and has been so clearly demonstrated in other communications, that any further reiteration of it is superfluous.

*Second.* It modifies the Act of 1855, by limiting to two

weeks the time for the completion of the census in cities; while in country districts four weeks are allowed. If an enumeration only was to be taken, one week would be ample time in either city or country districts; but this act contemplates an elaborate census, complicated in its details, and is intended to include a collection of mortality, manufacturing and other statistics of no value unless entirely accurate. Four weeks is barely sufficient for such a purpose in any locality, and especially it is true that two weeks' time is entirely inadequate to collect such statistics and to perfect an enumeration in crowded cities. The discrimination against the cities, where the population is the greatest and most difficult of ascertainment, could have no other purpose except to attempt by such undue restriction of time to obtain an inaccurate and defective enumeration, misrepresenting the actual population and thereby obtaining a political advantage. There was no propriety or necessity for this change in the law of 1855, and the discrimination is entirely indefensible.

*Third.* This bill abolishes the provision of that act which requires the returns of the respective counties to be filed in the offices of clerks of the counties, and directs that no returns shall be filed elsewhere than with the Secretary of State at Albany. All opportunity is removed for citizens to inspect the returns in their own localities, and this valuable safeguard for the detection of error and the prevention of frauds is entirely destroyed. The people are thus compelled to accept as correct the results of the census as announced at the Capitol. There is no means of testing the honesty or accuracy of the enumerators. The returns should remain for the inspection and information of the people near their own homes, as has always

been required, and an examination of them elsewhere than at the office of the Secretary of State should have been provided for. Such an innovation upon existing methods is not only without precedent, but without merit.

*Fourth.* This measure further amends the Act of 1855 by providing for a census which, in its form, extent and scope, is to correspond in all respects, with the federal census of 1880. A compliance with this provision requires the most extensive collection of statistics ever attempted by State authority. The census of 1880 cost the United States Government the sum of three million nine hundred and sixty thousand dollars up to November 1881, and there are already published ten bulky volumes of its statistics, and the printer's work is not yet finished. The portion of the cost paid by the people of this State is about four hundred and one thousand five hundred dollars.

The census authorized by the Act of 1855, construed in connection with the Act of 1845, required the gathering of statistics of a nature which must be regarded at the present time as in the main unnecessary and valueless.

The present measure in addition to such requirement compels a census so minute, complicated and extensive in its character as to render its cost a burden to the people. As has thus been shown the present measure differs materially from the Act of 1855, so frequently cited as the excuse or justification for the present enactment. It essentially changes, enlarges and amplifies the earlier act. The Legislature seems to have striven laboriously not only to attach a census to an enumeration measure, but to render such census as complicated, elaborate and costly as was possible. Its desire to prevent any enumeration whatever is ill-disguised.

It is believed by the Executive that the people of the State desire nothing more than an enumeration at the present time. They certainly do not desire a census of the proposed character, extent and cost. The last State census was taken in 1875, under the direction of Secretary of State Willers, who, in his report to the Legislature, recommended, with the assent and approval of Governor Tilden, that in the future the decennial census should be confined exclusively to an enumeration of the inhabitants. The recommendation made by the Executive in a special message in January last, and reiterated at every proper opportunity, has been in exact accord with the reform thus suggested in 1875. The census of 1875 cost the State at large for clerk hire, printing and other disbursements, the sum of one hundred and twenty-eight thousand and thirty-seven dollars, and in addition thereto cost the people of the respective counties for enumerators, the sum of two hundred and sixty-three thousand and thirty-four dollars and ninety-nine cents, making a grand total expense of three hundred and ninety-one thousand and seventy-one dollars and ninety-nine cents. Aside from the benefit derived from the enumeration of the inhabitants, all other information was substantially worthless. Statistics to be valuable must be accurate. They are absolutely worse than useless if not accurate, because they are misleading. It is impossible to collect them accurately within the short space of time allowed, and the statistics of the census of 1875 have never been of any practical benefit to a single merchant, farmer, mechanic or laboring man in the State. The State at large pays for the printing of the blanks, the publication of the census, for the compilation of returns and necessary clerk hire, while the respective counties,

through their local authorities, pay for the services of the enumerators. This distinction was not known, or else was forgotten, by many who endeavored to discuss this subject in the Legislature. The expenses to the State at large for a mere enumeration cannot exceed ten thousand dollars. To the respective counties the cost would not be over seventy thousand dollars. These facts were demonstrated by carefully prepared figures and estimates presented to the Senate in January last, and have never been successfully or seriously disputed.

No intelligent man who has given the subject any consideration, or inspected the comprehensive schedules required by the federal census, can doubt but what the preparation, compilation, and publication of such a census would cost the State at large at least double the amount which the State expended for the purposes of a census in 1875; and that the expenses to the respective counties for enumerators would necessarily exceed the sum expended that year, to wit: the sum of \$263,034.99, making a total contemplated expense of about \$450,000. It may even greatly exceed that sum, as under this bill the enumerators to be appointed for any district are unlimited, and they can be multiplied without number, according to the discretion of the appointing power.

The fact that it is expected that the State will receive back from the national government one-half of what the government paid its own enumerators in 1880, in consideration of furnishing to the government a copy of our census, is no justification for so large an expenditure as is demanded by this bill. The most that can possibly be received from that source is the sum of ninety-two thousand dollars, as the records of the government show, and it is folly for

the State to expend for statistical information over five times what is necessary, in order to receive in return less than one-fourth of the money expended.

It is confidently reasserted that there is no necessity or propriety in the expenditure of a large sum of money for the gathering of statistics, additional to those furnished by the federal census and those compiled by the various departments or bureaus of the State. The law of 1855 was proper enough at the date of its enactment, but the situation is now greatly changed. Between 1855 and 1875 the State created the following bureaus or departments, viz.: The State Board of Health, State Board of Charities, the Department of Public Instruction, the Superintendent of State Prisons, the Banking Department, the Insurance Department, as well as other boards, which are already engaged to a greater or less extent, at great expense, in collecting various kinds of statistical information. Since 1875 there have been established the Department of Public Works, the Board of Railroad Commissioners, the Dairy Commission and the Bureau of Labor Statistics, all employed in like labor and supported at great expense. Further expenditure for the same purpose would be a wicked waste of the people's money, which I shall not permit.

It is to be regretted that the Legislature has persisted in endeavoring to foist upon the State an act providing for the collection of unnecessary and valueless statistics, instead of a simple enumeration as required by the Constitution. The word "enumeration," as used in the Constitution, does not necessarily imply a bare count of the inhabitants, but as the context shows may properly be deemed to include the sex, age, citizenship or alienage

of the inhabitants, and for the purpose of identification may include their occupation. The Executive has at all times been willing to approve any fair measure that could reasonably be said to comply with this requirement of the Constitution, construed according to the most liberal interpretation. But the Legislature has manifested no disposition to adopt any measure relating to such enumeration which does not embrace provisions for the most costly and comprehensive census possible, and has endeavored to convert a matter purely economical and governmental into a party question. It has deliberately refused to pass an enactment required by the mandatory provisions of the Constitution, in order to pass one not required by that instrument, which the majority well knew contained features which could not meet with approval.

The issue thus presented is a simple one. The Executive insists upon a measure imperatively demanded by the Constitution and which provides for a simple enumeration of the inhabitants and that alone ; while the Legislature insists upon a measure enacted ostensibly in fulfillment of a constitutional obligation, containing provisions of an objectionable character, concededly not required or contemplated by the Constitution, and subjecting the taxpayers of the State to a useless net expenditure of over three hundred thousand dollars. The minority of the Legislature with entire unanimity resisted the passage of this bill, and I do not hesitate to withhold my approval from a measure which I firmly believe is not demanded by the best interests of the State. A new Legislature in another year, less prodigal of the people's money and more zealous for the protection of the interests of the taxpayers, can remedy the wrong

inflicted by the present one, and can perform the neglected work. A constitutional duty imposed upon the Legislature, but neglected or omitted by it, can legally be performed by its successor, at the first opportunity. The Executive having convened the Legislature in extraordinary session and urged the performance of its duty, can do no more. He has no power to compel the fulfillment by the Legislature of its constitutional obligation.

My duty is discharged when I have reminded the Legislature of its violation of the organic law, and afforded it an opportunity to retrace its steps. Another extraordinary session would undoubtedly leave the situation unchanged. The two great political parties have divided upon the question. One demands obedience to the Constitution; the other seeks to evade it. The Legislature to be elected this fall is competent to pass all the laws necessary for an enumeration and a subsequent reapportionment. The result of that election will show upon which side a majority of the people stand—whether they desire economical obedience to constitutional mandates or a prodigal expenditure of public money.

DAVID B. HILL.

MEMORANDUM FILED WITH ASSEMBLY BILL,  
NOT PRINTED, AMENDING THE CHARTER OF  
OGDENSBURG. APPROVED.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,  
ALBANY, June 2, 1885. }

*Memorandum filed with Assembly bill, not printed, entitled "An Act to amend chapter ninety-five of the Laws of eighteen hundred and eighty-one, entitled 'An Act to amend chapter three hundred and thirty-five of the Laws of eighteen hundred and sixty-eight, entitled "An Act to incorporate the city of Ogdensburg," and the acts amending the same.'" Approved.*

The approval of this bill is requested by the Member of Assembly and also the Senator who represent the district in which the city of Ogdensburg is situate. The mayor and common council of that city also desire it. It passed the Legislature unanimously, and there are no constitutional questions involved in it.

Under such circumstances I would hardly be justified in interfering to prevent it becoming a law, unless it is grossly objectionable or violates some settled principle or sound policy of the State.

It confers additional powers upon the local authorities in the matter of the construction of sewers. Similar powers have been vested in the authorities of several other cities. If the local authorities abuse their trust the electors can easily displace them.

In a city like Ogdensburg there is no particular danger in conferring upon its officials a broad discretion and enlarged powers without many restrictions.

The amendments contained in this bill are designed to improve the sanitary condition of that city and to facilitate the methods for the accomplishment of such improvement. The State Board of Health recommends the approval of the measure as essential to the preservation of the public health of that city, which is greatly threatened.

If, after a fair trial, the powers conferred are abused, or the act does not prove beneficial to the best interests of the city, it can readily be repealed or amended.

It is asserted that the taxpayers of the city are divided upon the question of the propriety of this measure. I have no means of ascertaining the sentiments of the majority, as petitions both for and against it, numerous signed, have been presented to me. I must rely upon the immediate representatives of the city in the Legislature to properly express the wishes of their constituents, and upon them must mainly rest the responsibility for their local legislation, where only matters of discretion are involved.

DAVID B. HILL.

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VETO, ASSEMBLY BILL No. 766, PROVIDING FOR  
THE WATER SUPPLY OF OSWEGO CITY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,  
ALBANY, June 8, 1885. }

*Memorandum filed with Assembly bill No. 766, entitled "An Act to supply the city of Oswego with pure and wholesome water." Not approved.*

This bill is not the one which was originally presented to the Legislature by the citizens of Oswego.

The original bill was believed to have been framed in accordance with the wishes of a large majority of the people of that city, but it was amended in the Legislature, and in its present shape differs in several important particulars from the original bill. It now contains provisions which are alleged to be of doubtful propriety, as well as unjust towards the city, claimed to have been inserted in the bill at the instance and through the efforts of the Oswego Water Works Company.

The people of that city should be permitted to have whatever beneficial and proper legislation they may require in reference to their water supply that may be demanded by public sentiment. The Executive is desirous of approving this measure, provided its provisions are reasonably satisfactory to the majority of the people, but not, if in its essential features, it is objectionable to them.

The difficulty in the present instance lies in determining what the people want. The local authorities, to wit, the common council, seem to be hopelessly divided upon the propriety and justice of the measure. The mayor, who ought to know the sentiments of the people, is earnestly opposed to it. There does not seem to be any preponderating sentiment in favor of it, so far as it has manifested itself or can be ascertained.

Under such circumstances I ought not to approve of a measure which I cannot be reasonably certain is desired by the citizens for whose benefit it is intended. A bill should not be forced upon them which they do not want.

It is better that legislation upon this subject should be postponed until January next, when another Legislature meets, or until a measure can be agreed upon which shall

not only be just and fair towards all interests, but one which surely protects the interests of the people and which can be clearly shown meets with their approval.

DAVID B. HILL.

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VETO, ASSEMBLY BILL No. 29, RELATING TO THE  
SINKING FUND OF THE CITY OF NEW YORK.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, June 9, 1885. }

*Memorandum filed with Assembly bill No. 29, entitled "An Act to improve the condition and operations of the Sinking Fund of the city of New York." Not approved.*

It is to be regretted that this bill is not more carefully framed so as to admit of approval.

There seems to be need for some well-considered legislation simplifying the system of finances existing in New York city, and removing some of the alleged fictions pertaining to the sinking fund.

The bill in its present shape is opposed by the mayor, corporation counsel, comptroller and chamberlain of said city.

The bill as originally presented by the committee of the council of reform was not enacted, but it was amended in the Legislature in several particulars, and is now in some respects confessedly defective. The second section, by repealing section 8 of chapter 383 of the Laws of 1878, not only extinguishes the special sinking fund provided for in that section, but absolutely destroys the security of that sinking fund, which was held out to investors by the law itself as an inducement for the investment in

the securities of the city, to meet the payment of which such sinking fund was provided.

It was expressly declared in that act that between the city and its creditors — holders of its bonds and stock — there was a contract that the funds and revenues of the city and the funds to be collected from assessments therein mentioned, which by that statute were pledged to the sinking fund for the redemption of the city debt, should be accumulated and applied only to the purposes of such sinking fund, *until all of said debt should be fully redeemed and paid* as therein provided.

If the entire indebtedness of the city incurred by virtue of the provisions of that section were now held by the sinking fund commissioners, there would seem to be no objection to its repeal. But it is shown that five million and twenty-nine thousand dollars of such bonds are now outstanding in the hands of third parties, who have invested in them on the express security of a sinking fund created in accordance with the provisions of the section of the law now sought to be repealed. Such repeal would be an impairment of the obligations of a contract, and is in clear violation of the Constitution.

There should have been a saving clause inserted, protecting such outstanding bonds from the effect of the act, or otherwise properly limiting its operation, and the friends of the bill admit that the omission of such a clause was accidental or unintentional.

It was substantially conceded upon the public hearing upon the bill that this defect renders it impossible of approval, and makes the examination of any further objections to it unnecessary.

DAVID B. HILL.

VETO, ASSEMBLY BILL No. 502, INCORPORATING  
THE NEW YORK COLLEGE OF MEDICINE.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, June 10, 1885. }

*Memorandum filed with Assembly bill No. 502, entitled "An Act to incorporate the New York College of Medicine and Surgery." Not approved.*

This bill proposes to create a corporation to be known as the "New York College of Medicine and Surgery," the purposes of which corporation are declared to be "to establish and maintain an institution in the city of New York for the instruction of students in medicine, surgery, hygiene and all branches of science and knowledge relating to the art of healing."

I am clearly of the opinion that the Legislature having, by a general act (chapter 184, Laws of 1853), made provision for the organization of such corporations, there exists no adequate reason for the approval of the bill before me. It is special legislation of a character prohibited by section 18, article III of the Constitution. Since the adoption of this amendment to the Constitution it is to be observed that no charter to a college strictly for medical purposes has been granted by the Legislature.

Chapter 184 of the Laws of 1853, amended by chapter 513 of the Laws of 1880, provides that upon application duly made in compliance with certain conditions specified in the law, the Regents of the University of the State of New York "shall grant a charter." In the case before me it does not appear that a proper application, complying with the conditions imposed by the existing law of the

State, has been made to the Regents. When such an application shall have been made and refused—and that such application will be refused is not assumed—then there will exist the remedy by *mandamus* to compel the Board of Regents to perform the duty imposed upon them as State officers. After these methods of procedure shall have been employed and have failed to accomplish the object desired, it will be ample time to seek the aid of the Legislature, and by a special law to secure to the people of the State those beneficial results which it is to be presumed will follow from the establishment of a corporation of this character.

I do not deem it necessary to discuss the alleged defects to which my attention has been called by the opponents of the bill, but prefer to rest my disapproval solely upon the ground that the bill is needless special legislation of a character many times the subject of Executive veto during the session of the Legislature.

DAVID B. HILL.

MEMORANDUM FILED WITH SENATE BILL No.  
113, TAXING COLLATERAL INHERITANCES.  
APPROVED.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, June 10, 1885. }

*Memorandum filed with Senate bill No. 113, entitled "An Act to tax gifts, legacies and collateral inheritances in certain cases." Approved.*

The principle involved in this bill has been recommended for several years by the State Board of Assessors, and is understood to be favored by the Comptroller.

While I have decided to approve of the bill just as it stands, it may, however, be here suggested that it should perhaps be amended in the future by limiting the inheritances and legacies to be taxed to those of over five thousand dollars in amount or value, thereby preventing the possibility of any hardship being imposed upon persons of limited means receiving small estates.

The proposed method of taxation is a new one in this State, and it seems to be worthy of a fair trial.

DAVID B. HILL.

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VETO, SENATE BILL No. 444, CONCERNING THE  
NEW YORK ARCADE RAILROAD.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, June 11, 1885. }

*Memorandum filed with Senate bill No. 444, entitled "An Act to extend and supplement the rights, powers and duties of the New York Arcade Railway Company." Not approved.*

It is urged by the opponents of this bill, among other things, that it was rushed through the Legislature during the closing hours of the session, in indecent haste and in violation of every legislative right and privilege to which those who sought to oppose it were honestly entitled. An objection of this nature, although not frequently urged before the Executive, is, nevertheless, of great weight. Objections based upon the manner and methods by which an act is passed, while they do not affect its legality, may properly be entertained in considering its fairness and

avowed purposes, and sometimes may well be deemed to characterize the whole scheme contemplated by the bill.

It is conceded that the bill before me was not even introduced in the Senate, where it originated, until the latter half of the session, and thereupon, when its opponents applied for a hearing, they were informed that it was not then expected to press the bill, but that if it should afterwards be urged, they would be duly notified and afforded ample opportunity to be heard. The bill was thus allowed to quietly slumber in the Senate Committee on Railroads, until after the date for the final adjournment had been agreed upon, and then it was suddenly brought forward—and only a portion of its opponents being given a few hours' notice of a hearing, a notice wholly inadequate for proper preparation—was speedily rushed through the Senate on Wednesday of the last week of the session, and reached the Assembly on Thursday of that week, where a request for a hearing was denied, and without amendment debate, or opportunity for discussion, and under the operation of the parliamentary device known as "the previous question," it was put through that body the following forenoon about an hour before its adjournment.

Such proceedings, while they do not invalidate the passage of a bill, nevertheless violate all sense of legislative propriety, and bring scandal and disgrace upon the law-making power. The practice of withholding important measures in the interest of private corporations until the last days of the session, and then rushing them through without consideration, debate, amendment or opportunity for scrutiny, but amid confusion and disorder, is a growing evil which must be checked. It affords facilities for corrupt and dishonest legislation; it prevents a candid considera-

tion of measures upon their merits ; it opens the door for charges of unfairness, and casts suspicion upon the integrity of legislators.

Citizens whose interests are affected, or are believed to be affected, by legislation proposed in behalf of private corporations, have a just and equitable right to be heard in opposition to such legislation before the proper committees of the two houses. In no other way can such citizens be permitted to urge their grievances and present their arguments before the Legislature. Such a right should be jealously guarded and stoutly maintained. An intentional infringement or deprivation of it should naturally cast suspicion upon the integrity of the legislation enacted in disregard of so essential a prerogative.

This bill concerns the greatest thoroughfare in this country, and involving franchises and privileges of immense worth, affects not only the interests of the city of New York itself, but the interests of thousands of its citizens who are the owners of property of many millions of dollars in value. These citizens, if they so desired, were entitled to a reasonable opportunity to be heard in opposition to the bill. There should have been no undue or improper haste. Full and ample hearings should have been afforded to all sides, and especially to the local authorities and the owners of property affected by the proposed legislation. Opportunity for debate and amendment should have been extended.

The Legislature itself, as well as private corporations, should understand that the citizens of New York city have interests and rights which must be respected.

A bill upon a subject so important as this should be carefully considered, thoroughly discussed, deliberately and

honestly acted upon, with full opportunity for modification and amendment. Its passage, under such circumstances, would carry with it a strong probability of merit. It is evident, not only from the conceded facts pertaining to the introduction, progress and final passage, that this bill carries with it no such presumption of merit, but also a bare glance at its provisions shows conclusively that it has not received due and proper consideration at the hands of the Legislature. It fails in several essential particulars to adequately protect the interests of the city or the property of the citizens or the rights of the public. It perpetuates many of the defects which were urged as objections to the same measure one year ago by Governor Cleveland. These it is unnecessary to reiterate here. The bill cannot now be amended, but must stand or fall as a whole. The objections might have been obviated had either such fair consideration been given to the bill as has been indicated it was entitled to receive, or had the measure been submitted to the Board of Railroad Commissioners for investigation and opinion. That board was created by the State for the very purpose of aiding the Legislature in determining the propriety of railroad legislation, and its services might, with great propriety, be oftener sought, and would, unquestionably, have been particularly valuable in perfecting this measure, involving interests of such great magnitude. Such a course was not pursued, but, on the contrary, the bill seems to have been hastily prepared, speedily progressed, and pressed through the Legislature under the circumstances stated, without consultation with the city authorities or the indorsement of the Railroad Commissioners, or the approval of any public official or body whatever, aside from the hasty action of the Legislature itself.

Under the circumstances stated I cannot approve of this measure.

It is desired also by this action to emphasize my condemnation of the offensive and ill-advised methods invoked in its passage, in the belief that such a course will prove beneficial to future Legislatures, in compelling the introduction of bills in the earlier days of the session, and in securing greater deliberation and enforcing better consideration and respect for public interests and the rights of property owners, while enacting important laws at the instance and for the benefit of private corporations.

Legislation, instead of being the fair and deliberate expression of the honest convictions of the people's representatives, is fast becoming, under existing practices, a scandalous mockery, and it is a fit time to insist that there should be a return to the legislative methods of earlier and purer days, if bills are expected to receive Executive approval.

DAVID B. HILL.

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VETO, ASSEMBLY BILL No. 421. — ITEMS IN THE  
SUPPLY BILL.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, June 13, 1885. }

*Statement of items of appropriation objected to and not approved, contained in Assembly bill No. 421, entitled "An Act making appropriations for certain expenses of government and supplying deficiencies in former appropriations."*

The several items herein enumerated, contained in Assembly bill No. 421, entitled "An Act making appropria-

tions for certain expenses of government and supplying deficiencies in former appropriations," are objected to and not approved, for the reasons hereinafter stated.

For the payment of the expenses for cartage of Assembly documents to and from the post-office in Albany, during the session of eighteen hundred and eighty-five, to be paid to the parties who rendered the services, the sum of five hundred dollars.

This item is objected to and not approved. The amount appropriated for defraying the contingent expenses of the Assembly is amply sufficient to cover this item, and should be paid therefrom, if at all. This work should be performed by some of the employes of the Assembly as part of their regular duties. There are too many sinecure positions in connection with the Legislature.

For the payment of the expenses of cartage of Senate documents to and from the post-office in Albany, during the session of eighteen hundred and eighty-five, to be paid to the parties who rendered the services, the sum of three hundred and seventy-five dollars.

This item is objected to and not approved, for the same reason given concerning the preceding item, making a similar appropriation for the cartage of Assembly documents.

For the officers and employes of the Legislature of eighteen hundred and eighty-five not exceeding three in number in each house, as may be designated by the presiding officers of the respective houses, to remain after the adjournment of the Legislature to perform duty under the direction of the clerk of each house, respectively, for a period not exceeding ten days, to each one, in such sum not exceeding his legal per diem allowance, as the clerk of each house respectively shall certify and apportion out of the sum hereby appropriated, the sum of three hundred and sixty dollars, or so much thereof as may be necessary.

This item is objected to and not approved. These officers and employes of the Legislature of eighteen hundred and eighty-five have actually been paid for these services, showing conclusively that the amount of money regularly

appropriated for legislative expenses has been sufficient and ample.

For deficiency in appropriations, for expenses of legislative committees, fees of counsel and stenographers engaged therein, and for other contingent expenses of the Legislature, twenty thousand dollars, or so much thereof as may be necessary, to be paid, in the case of legislative committees, on the certificates of the chairmen of the respective committees and of the presiding officers of the respective houses, and in other cases on the certificates of the presiding officers and clerks of the respective houses, and in all cases on the order of the Comptroller.

The Comptroller is hereby directed to adjust the accounts of stenographers who have been heretofore appointed by resolutions of the Senate, at the compensation fixed in the resolutions of the Senate.

This item is objected to and not approved. The legislative years in which were incurred the deficiencies to be covered by this item are not mentioned. If it is intended for the Legislature of 1885, it is not needed, for there is no such deficiency; if intended for former Legislatures, it should have been so stated. One hundred and thirty-four thousand dollars have been appropriated to meet legislative expenses for the years 1881 to 1885, inclusive, and this should be sufficient. If any just claims are unpaid, they should be so particularized as to render clear the legislative intent.

The last clause of this item is especially objectionable, in that it directs the Comptroller to adjust certain accounts, not at what he shall deem to be a reasonable compensation, but at a certain fixed sum. An auditing officer should be left to exercise his judgment in such cases.

For the purchase of the collection of zoological and other specimens of the late F. Z. W. Hurst, for the State Museum of Natural History, five thousand dollars, to be paid upon the approval of the director of the State Museum of Natural History and the approval of the Secretary of the Board of Regents.

This item is objected to and not approved. No provision

has been made for appraising or fixing the value of this collection.

If the officials named in this item desire to purchase the collection, they are obliged to pay the full sum of five thousand dollars, though the specimens should be worth a less amount. It is possible that other collections of a similar nature might be purchased for a smaller sum. This expenditure of the public money is deemed unnecessary at this time.

For the purchase of four geographic, standard time globes, to be placed in the Executive Chamber, the libraries of the Senate and Assembly, and in the State Library room, the sum of twelve hundred dollars.

This item is objected to and not approved. Such a standard time globe might be properly placed in the State Library. If so, the regular appropriation for the library would cover the expenditure, and the library authorities have power to make such a purchase. With equal propriety, such a globe might be purchased and placed in every office and department in the State government. The Executive Chamber does not require this piece of furniture, and the Senate and Assembly libraries are closed for two-thirds of the year.

For the Comptroller, for the payment to Mrs. Eliza M. Gallien, widow of Henry Gallien, late Deputy State Comptroller, the sum of four thousand dollars, being the amount of salary of the said Henry Gallien for one year.

This item is objected to and not approved. It was vetoed by Governor Cleveland in 1884, in the following words :

“This item is objected to and not approved, for the reason that it grants a gratuity from the treasury of the State, which is neither based upon any equitable claim nor legal consideration. While the sentiment involved in this appropriation is creditable, and while it would be exceed-

ingly pleasant for me to join the Legislature in presenting the sum of money mentioned to the family of an employe of the State who died in its service, having for many years faithfully performed the duties pertaining to a most responsible position, I cannot forget that the money which it is thus proposed to appropriate was drawn from the people by taxation, for the purpose of meeting the necessary expenses of the Government, and that we have not their consent to apply it to other objects. It is further undeniable that during all the time of his service, and up to the very day of his death, Mr. Gallien was paid by the State a liberal and generous salary. I cannot think that this gift is permissible, if due regard is had to the rights of the people, with such an application of business principles to the subject as they are entitled to demand."

I do not see how I can consistently reverse the decision of Governor Cleveland upon this question.

For the Comptroller, for the payment to Mrs. Catherine D. Pierson, widow of William W. Pierson, late journal clerk of the Senate, of that portion of the annual salary of such journal clerk which has not been paid, the sum of eight hundred dollars.

This item is objected to and not approved. The reasons given for disapproving the preceding item apply to this appropriation.

For erecting a suitable monument, and iron fence around the same, in the cemetery in the village of Mount Morris, New York, at the grave of William Tall-Chief, a statesman and chief of the Seneca tribe of the Six Nations of Indians, to perpetuate the memory of his services in behalf of the white man, the sum of one thousand dollars, to be expended under the supervision of Myron H. Mills, Hathorn Burt and Hurlburt E. Brown, who are hereby appointed a commission for that purpose.

This item is objected to and not approved. This Indian, who was a chief of the Cayuga nation, was not a remarkable historical character. That he rendered important services is admitted; but these services were not greater

than those rendered by the other chiefs and sachems who signed the treaties with Governors Van Buren and Throop.

Private subscription, or the locality in which these chiefs lived, should bear the expense of erecting monuments to the memory of these Indians, and the sum of one hundred dollars, in any event, would be ample to provide a suitable memorial stone.

For the Comptroller, to be distributed by him among the persons entitled thereto for unpaid services, arising from deficiency in the appropriation, performed by the clerks now in his office in preparing for and making a sale of lands, in eighteen hundred and eighty-one, for arrears of taxes for the years eighteen hundred and seventy-one to eighteen hundred and seventy-six, inclusive, the sum of twenty-four hundred dollars.

This item is objected to and not approved. This appropriation is intended as extra compensation for certain clerks now employed in the Comptroller's office. Such clerks as were engaged upon these same "unpaid services" and who are not now in the State's employ, would be as properly entitled to this extra compensation. There is a strong objection to paying State employes for alleged extra services. There are emergencies in all private and public offices when employes, who are not over-worked for the greater portion of their time, should give willingly a little extra labor.

For the Secretary of State, for expenses necessarily incurred by him pursuant to chapter sixty-four of the Laws of eighteen hundred and fifty-five, in making preparation to take the census of eighteen hundred and eighty-five, to be paid upon his voucher, the sum of twelve hundred dollars, or so much thereof as may be necessary.

This item is objected to and not approved. These expenses should not have been incurred in the absence of an appropriation for a census. If they were thus incurred, without a specific appropriation, they were contracted in contravention of the statute of 1876, and if they are to be paid at all, they must be paid out of the regular fund

provided for the maintenance of the office of the Secretary of State.

For the State Board of Health, for deficiency in appropriation for sanitary inspectors, compensation and traveling expenses, fifteen thousand dollars.

This item is objected to and not approved. The books of the Comptroller's office show that no such deficiency exists, and I am, therefore, of the opinion that this appropriation is entirely unnecessary.

For the State Board of Health, for printing monthly bulletin of mortality and other official circulars, one thousand dollars.

This item is objected to and not approved. This is not regarded as a necessary expenditure of the public money at the present time. Whatever printing is needed should be paid for out of the liberal appropriation already made for such board.

For the State Board of Health, for registers, blanks, expressage and laboratory apparatus, five hundred dollars.

This item is objected to and not approved, for the same reasons as those given in disapproval of the previous item.

For the Commissioners of Emigration to pay amount of interest due on mortgage on real estate on Ward's Island, now held by the Comptroller in trust for the United States Deposit Fund, from July first, eighteen hundred and eighty-three, twelve thousand dollars.

This item is objected to and not approved. In 1882 the Comptroller purchased of a New York savings bank a mortgage of two hundred thousand dollars held by that institution on *State property* on Ward's Island, New York harbor. The purchase was made on account of the United States Deposit Fund, a trust held by the State, the principal of which is to be held inviolate by the State. Upon the assumption of the mortgage by the Comptroller, the Commissioners of Emigration refused to pay interest upon the same except

by appropriation from the State treasury. No such appropriation being available since July 1, 1883, there has been a default in interest on this trust investment of the State. This appropriation is to provide interest money from the treasury for that purpose. If the State is to pay interest on its own mortgage, it should not only provide the sum now due, but also for the next year's interest up to July 1, 1886. The State has no need of resorting to this questionable method. It receives but two per cent on its own funds in bank, and it should not be called upon to pay six per cent. on its own mortgage. The Legislature should have met this matter by providing for the discharge of the mortgage by foreclosure through a direct appropriation, and thus ended a financial transaction which will yearly demand appropriations from the treasury, and which must be met eventually in full from that source, both principal and interest.

For the Commissioners of Emigration, for rebuilding the landing wharf at Castle Garden in the city of New York, ten thousand dollars.

This item is objected to and not approved. Castle Garden belongs to the city of New York, and is rented by the Commissioners of Emigration at a rental of twelve thousand dollars per annum. It would seem that such repairs as are necessary should be made by the local authorities of that city, or, if it is incumbent upon or proper for the State to do the work, it should be done under the supervision of the Superintendent of Public Works or the State Engineer and Surveyor.

For an additional assistant librarian in the State Library, for salary, one thousand dollars.

This item is objected to and not approved. The appointment of an additional assistant librarian, at this

time, is not deemed necessary. When the State Library is finally located in its permanent quarters in the Capitol, the advisability of such an appropriation may be properly considered.

For the publication of one thousand copies of the geological map of the State of New York, accompanying the report of the State Geologist for eighteen hundred and eighty-five, two thousand five hundred dollars, or so much thereof as may be necessary ; to be paid on the certificate of the secretary of the Board of Regents, and on the audit of the Comptroller.

This item is objected to and not approved. No provision is proposed for the correct distribution of these maps. If they are to be published at all by the State, they should be distributed according to some plan prescribed by law, and in such a manner that a copy would surely be found in the principal libraries and educational institutions of the State.

For the Comptroller for reimbursing the agent of the Comptroller for the amount paid by him for traveling expenses while in the performance of his duties as auction agent, during the years eighteen hundred and eighty-two and eighteen hundred and eighty-three, the sum of one hundred and twelve dollars and fifty-two cents.

This item is objected to and not approved. I am informed that the man who is to receive this was the assistant auction agent from 1880 to 1884 ; his salary was one hundred dollars a month. The place was an absolute sinecure, as he never collected more than fifty or a hundred dollars a year, as I am informed. The present Comptroller has abolished the office.

For the legal representatives of John H. O'Hara, deceased, as a member of Assembly from the county of New York, who died during the session of the Legislature of eighteen hundred and eighty-five, the sum of three hundred and forty dollars, or so much thereof of his annual salary as remains unpaid.

This item is objected to and not approved. If the State owes the representatives of Mr. O'Hara anything for serv-

ices, they can be paid upon presentation of proper vouchers to the Comptroller. If, on the other hand, this is intended as a gratuity, it is objectionable for the reasons already given in the items for Mrs. Eliza M. Gallien and Mrs. Catherine D. Pierson.

For the Commissioners of Navigation of Chautauqua lake, appointed under chapter three hundred and thirty-nine of the laws of eighteen hundred and eighty-four, for removing obstructions in the outlet of said lake, and for establishing buoys at necessary points in said lake, five thousand dollars, or so much thereof as may be necessary.

This item is objected to and not approved. It is not regarded as a proper expenditure of the public money, especially at the present period of business depression.

For the improvement of the navigation of the west branch of the St. Regis river and a large branch or fork of said river called Stony Brook, the sum of seven thousand dollars in clearing and improving the channels of the same, to be expended under the direction of, and authority of Jonah Sanford, Henry J. Flanders and Simeon L. Clark, who are hereby appointed to constitute a board of commissioners to carry into effect the provisions of this item, who shall execute and file in the office of the Comptroller, a bond to the people of the State of New York, in the penal sum of fourteen thousand dollars with sufficient sureties to be approved by said Comptroller, conditioned for the faithful performance of their duties, before entering upon the same. A majority of said commissioners shall constitute a quorum for the transaction of business. Said commissioners shall receive no compensation for their services. In case of death, resignation of any of said commissioners, or refusal to serve as such, such vacancy shall be filled by appointment by the Governor.

This item is objected to and not approved, for the reason that the work proposed should be done under the supervision of the State Engineer and Surveyor, the Superintendent of Public Works, or some other existing State authority. The system of appointing citizens to do specific work which can be better accomplished under the direction of public officials, is deemed particularly objectionable.

For services and expenses of removing intruders upon the lands of the St. Regis Indians, in Franklin county, pursuant to chapter two hundred and

four of the Laws of eighteen hundred and twenty-one, two hundred dollars, or so much thereof as may be necessary.

This item is objected to and not approved, for the reason that an appropriation identically the same has been already made in chapter two hundred and forty of the laws of this year.

For the repair of the three thoroughfares extending north and south on the Onondaga Indian Reservation, known as the Tully post road, the La Fayette road and the East La Fayette road, and for the repair of the bridges in the same, the sum of two thousand dollars, to be expended under the supervision of Frank A. West and Sumner L. Hunt, who are hereby appointed commissioners for that purpose upon vouchers to be approved by the Comptroller. Before entering upon the discharge of their duties, the said commissioners shall execute to the people of this State a bond to be approved by the Comptroller, for the faithful discharge of their duties, and that they will truly account to the Comptroller for all expenditures made by them as such commissioners. The actual and necessary expenses incurred by such commissioners in the discharge of their duties may be refunded to them by the Comptroller out of the sum herein appropriated.

This item is objected to and not approved, for the same reasons given for disapproval of the item for the improvement of the navigation of the west branch of the St. Regis river and a large branch of said river called Stony Brook. Moreover, the amount of the bond to be given the State by the commissioners is not specified.

For the State Normal School at Geneseo, for erecting a suitable building for the school of practice, providing heating and ventilating apparatus, plumbing, gas-fitting, sewers, cisterns, grading, fencing, laying walks, school furniture and for additions to the present building, and alterations of the same, the sum of twelve thousand five hundred dollars, to be expended by the local board of trustees of said Normal School after the plans and specifications have been approved by the Superintendent of Public Instruction, and a contract, with proper sureties, has been made for the completion of the said building and the repairs and improvements contemplated, at a cost not to exceed twenty-five thousand dollars.

This item is objected to and not approved. The State has already, this year, made appropriations of a very con-

siderable sum for the erection and completion of new normal schools, and I do not deem the need for this particular appropriation so pressing but that it can wait until another year.

For erecting a suitable building for school purposes, for Union Free School District Number One, of the town of Wilna, Jefferson county, in the place of buildings destroyed by fire in the village of Carthage, in said town, the sum of twenty thousand dollars, to be expended under the direction of the Board of Education upon vouchers to be approved by the Comptroller.

This item is objected to and not approved. The people of Carthage, on the 20th day of October, 1884, suffered a great misfortune by an unusually destructive fire. School-houses, together with churches, corporation and mercantile buildings and the private homes of their people were destroyed. This item provides for an appropriation by the State to rebuild the Union School. This the State cannot properly do. It is not the province of the State to erect public buildings for local purposes. The moneys of the State can only be legitimately expended for State purposes. The appropriation would be establishing a pernicious precedent, which I cannot inaugurate. If this appropriation is sanctioned, it will be difficult to resist sympathetic appeals from localities which may suffer from similar, even if not so severe, calamities. I am deeply sensible to the appeals of the people of Carthage to the generosity and sympathy of the State, but I am constrained to place myself in full accord with Governor Lucius Robinson upon this subject of public expenditures for private or local purposes, when he said: "The functions which we exercise are committed to us as a sacred trust. The government which we control as public officers is not our own; it belongs to those who placed us here. The laws which we enact do not express our will; they are the voice of the people. The money

which we handle belongs to them and not to us. We can only take it from them for the legitimate expenses of government. More than this is robbery. Official generosity is official crime."

For deficiency in appropriation for the maintenance of convicts sent to penitentiaries, in pursuance of chapter one hundred and fifty-eight of the laws of eighteen hundred and fifty-six, chapter five hundred and eighty-four of the laws of eighteen hundred and sixty-five, chapter six hundred and sixty-seven of the laws of eighteen hundred and sixty-six, chapter five hundred and seventy-four of the laws of eighteen hundred and sixty-nine, chapter two hundred and forty-seven of the laws of eighteen hundred and seventy-four, and chapter five hundred and seventy-one of the laws of eighteen hundred and seventy-five, ten thousand dollars, or so much thereof as may be necessary.

This item is objected to and not approved. I learn from the records at the Comptroller's office that no such deficiency exists.

For printing eight hundred copies of the Clerk's Manual of eighteen hundred and eighty-five, pursuant to concurrent resolution of the Legislature, passed January twenty-ninth, eighteen hundred and eighty-five, four hundred dollars, or so much thereof as may be necessary ; to be paid on the certificate of the clerks of the Senate and Assembly that the same has been properly printed and delivered, and on the audit of the Comptroller.

This item is objected to and not approved. The contingent fund for legislative expenses is ample to cover such an expense as this.

For printing one thousand copies of the testimony taken before the Special Committee of the Senate, appointed January ninth, eighteen hundred and eighty-five, to investigate the supply of gas in the city of New York, twelve hundred and fifty-five dollars and seventy-five cents, or so much thereof as may be necessary, to be paid on the certificate of the chairman of the Committee and the president of the Senate, and on the audit of the Comptroller.

This item is objected to and not approved. The regular number of copies of this Committee's report should be sufficient. These have already been printed and paid for. A concurrent resolution furnishes no authority for incur-

ring any expenditure of the State's money. If authority for such publication is given at all, it should be by a distinct bill.

For printing and binding, in cloth, one thousand copies of the University Convocation of eighteen hundred and eighty-four, pursuant to concurrent resolution of the Legislature, passed February twelfth, eighteen hundred and eighty five, six hundred and fifty dollars, or so much thereof as may be necessary, to be paid on the certificate of the secretary of the Board of Regents of the University that the work has been satisfactorily done and delivered, and on the audit of the Comptroller.

This item is objected to and not approved. The reason for objecting to the preceding item obtains in this case.

DAVID B. HILL.

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VETO, ASSEMBLY BILL No. 684, CONCERNING  
UNPAID TAXES IN LONG ISLAND CITY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, June 13, 1885. }

*Memorandum filed with Assembly bill No. 684, entitled "An Act in relation to unpaid taxes, assessments, water rates and rents in Long Island City, and to confirm, levy and collect the same, and to insure a more efficient collection of the same in the future. Not approved.*

It is with great regret that I feel compelled to withhold my approval from this bill. I accept the statements of the officials of Long Island City that there is much necessity for some legislation concerning the collection of taxes and assessments in that city, and any proper bill, carefully devised and reasonably free from objectionable features, designed to aid in such collection, would cheer-

fully receive my signature. But I cannot be expected to approve of an objectionable measure, and one containing unjust provisions.

This bill provides, among other things, that the city may not only sell the property of a person or corporation upon which property a tax has been assessed, but that it shall have a "concurrent remedy" by action against the owner of such property to recover such tax. This so far as non-residents are concerned is not only unjust but is believed to be without precedent. If there are any precedents for such improper legislation, I have no hesitation in saying that they ought not to be followed. There is no objection to an action being maintained against any resident person on account of personal taxes, because the city has jurisdiction of his person. He is a part of the local body politic, and properly amenable to such a proceeding, and there may also be some propriety in permitting such resident to be sued for the taxes against his real estate after or without first exhausting such real estate, but it is manifestly unjust to authorize an action to recover personally of a non-resident of the city, taxes against his real estate which he happens to own in that city, whether without or after first exhausting such real estate. Taxes imposed against non-residents are properly so imposed only because of the property itself and are assessed in form solely against the property. There should not exist any remedy against such owner. It is sufficient that the municipality is permitted to sell the entire real estate, and if the city government has conducted its affairs so recklessly, extravagantly or corruptly that the taxes exceed its value, the city should be remediless, so far as any further proceedings against the owner are

concerned. An entire confiscation of the property of a non-resident should be deemed a sufficient exercise of the arbitrary power of taxation, without going further and permitting an action to be maintained against the owner personally to recover any deficiency. These are elementary principles of taxation, about which there ought not to be any question. It is difficult to comprehend the wisdom which insisted upon such an extraordinary provision being inserted in this bill.

Every taxpayer in Long Island City would realize the monstrous unfairness of this provision if it should be applied to himself by another municipality. If, for instance, some resident of Long Island City of moderate means should be willed by a relative some real estate in Albany city, and a large and burdensome tax should thereafter be assessed against the property, equal to or in excess of the value of it, and although he might be willing to permit the property to be entirely confiscated to satisfy the tax, he should be sued and a large deficiency recovered against him personally, he could keenly experience the outrageous injustice of such a proceeding and of such legislation as I am asked to sanction by the approval of this bill.

An amendment should have been accepted, striking out this obnoxious clause and the measure used thereby have been freed from one of its most objectionable features; and when the perfecting of the bill was comparatively so easy a task it would seem as though it were the height of folly to have imperiled the final success of a measure containing so many good and desirable features by insisting upon the retention of a clearly offensive provision.

So important a bill as this should have been passed earlier in the session, so that it could have reached the

Executive in time for examination and for amendment before the final adjournment. It cannot now be corrected.

There are some other provisions in the bill which are alleged to seriously affect the vested rights of creditors of the city, who hold its certificates of indebtedness known as "improvement certificates."

There seems to be some force in the claim that this bill, by giving the city treasurer power in his discretion to purchase in behalf of the city such lands as may be sold for assessments, at the full amount thereof, with interest, costs, etc., when under the previous laws under which such certificates were issued he had no such discretion, but was absolutely obliged to make such purchase, whereby the whole city virtually became liable therefor,—does to some extent impair the value of such certificates, and may be deemed to impair the obligation of a contract. But I am not prepared to say that such claim on the part of the holders of such certificates is well founded, neither do I dispute it. It becomes unnecessary to determine the point.

The bill is grossly objectionable for the reasons first above stated, and I am compelled to withhold my approval without critically examining it further.

DAVID B. HILL.

VETO, SENATE BILL No. 317, PROVIDING FOR  
COMPILATION OF CRIMINAL STATISTICS.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, June 13, 1885. }

*Memorandum filed with Senate bill No. 317, entitled "An Act to provide for the compilation and preparation of certain criminal statistics by the Prison Association of New York." Not approved.*

This bill is objectionable because it seeks to duplicate the labors of a State department and appropriates for this purpose the sum of three thousand five hundred dollars out of the public moneys to a private corporation.

The gathering of such statistical information as is provided for by this bill belongs properly to the Superintendent of State Prisons, and this information, in point of fact, is for the most part gathered annually and reaches the public by means of annual reports to the State Legislature.

DAVID B. HILL.

VETO, SENATE BILL, No. 425, PROVIDING FOR  
APPROACHES TO THE BROOKLYN BRIDGE.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, June 13, 1885. }

*Memorandum filed with Senate bill No. 425, entitled "An Act providing for the completion, control and management of the New York and Brooklyn Bridge." Not approved.*

It is conceded that this measure was not intended to be passed in its present form. The original fifth section of the bill was stricken out, but several other provisions claimed to have been inserted with sole reference to it, were inadvertently permitted to remain. Serious differences of opinion now exist even among the friends of the bill as to the effect of this unfortunate legislative blunder. The question arises whether the new trustees would have the power to issue bonds to an unlimited amount for any of the purposes specified in the act, or whether the provisions in reference to bonds are nugatory in whole or in part. It is difficult to understand what "extensions" are contemplated by the bill, or what powers are actually intended to be conferred upon the trustees named in the bill. It must be admitted that the bill is open to different interpretations, and therefore liable to lead to various complications and much litigation.

An act involving such important interests should be clear and certain in its provisions.

There seems to be need for some proper legislation providing for increasing the facilities and accommodations, especially on the New York side, but the bill cannot be

approved in sections, and as it contains serious defects, it must fail as a whole. Although strongly pressed to do otherwise, I must decline to approve of such slipshod legislation.

DAVID B. HILL.

VETO, ASSEMBLY BILL No. 109, REGULATING THE  
OFFICE OF THE CLERK OF KINGS COUNTY.  
ALSO, ASSEMBLY BILL No. 107.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, June 14, 1885. }

*Memorandum filed with Assembly bill No. 109, entitled "An Act in relation to the office of the clerk of the county of Kings." Also Assembly bill No. 107. Not approved.*

This bill is clearly defective. It changes the system of conducting the office of county clerk from an office sustained by fees collected from persons transacting business with it, to a salaried office to be supported by the county; but there is an entire omission in the bill to fix any definite salary for such official. It says he shall receive a salary which shall not exceed the sum of ten thousand dollars. This omission renders the bill imperfect in my judgment. It is claimed that it is intended that the salary shall be fixed by the board of supervisors, and that this may be done under its general power conferred by another law, to fix salaries not otherwise determined. This is an improper method and is without precedent in this State, so far as the office of county clerk is concerned. In the bill signed by Governor Cleveland, last year, relating to the New York county clerk, the salary was fixed in the law itself. In the Erie county clerk's bill,

also passed by the present Legislature, the salary was determined in the bill. The register's office in the city of New York was last year changed to a salaried department, and in the very bill making the change the salary was definitely stated. By the terms of this bill there is no such provision, but the compensation of the county clerk is to depend upon the discretion, fairness or caprice of the board of supervisors. This is highly improper. An official having considerable patronage at his disposal, should not be obliged to depend upon such a body for the determination of his compensation. His compensation should be definitely fixed by law. He should not be subjected to the possibility of improper demands upon him from the body which determines the salary of his office.

Such a power has a tendency to breed corruption and is liable to abuse where it is to be exercised with reference to such an office.

It is unnecessary to further consider the bill. Regarding this defect as vital and material, the bill cannot meet with my approval. It is to be regretted that it was not passed until the closing hours of the session, at a time too late for its return to the Legislature for amendment. I am constantly solicited to sign defective and imperfect bills, but I cannot consistently do so. The responsibility for their failure must remain with the Legislature. Early in the session I urged the necessity of the Legislature's selecting some competent counsel to examine bills before they should be presented to the Executive, in order to perfect and amend them, but the Legislature ignored the suggestion. The main principle involved in this bill is not objected to, and I have indorsed the application of that principle embodied in the Erie county clerk's bill, which I have to-day

approved, and which is entirely free from the objections raised to this bill.

For the same reasons I am also compelled to withhold my approval from Assembly bill No. 107, entitled "An Act in relation to the office of the register of the county of Kings."

DAVID B. HILL.

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MEMORANDUM FILED WITH SENATE BILL No.  
364, PROVIDING MEANS FOR EXPERIMENTS  
BY CHARLES T. HARVEY IN RAPID TRANSIT.  
APPROVED.

STATE OF NEW YORK.

EXECUTIVE CHAMBER, }  
ALBANY, June 13, 1885. }

*Memorandum filed with Senate bill No. 364 entitled "An Act to amend chapter eight hundred and fifty-five of the Laws of eighteen hundred and sixty-eight, entitled 'An Act supplementary to chapter four hundred and eighty-nine of the Laws of eighteen hundred and sixty-seven, and to provide for the collection and application of revenue in the county of New York in certain cases.' " Approved.*

The approval of this bill is asked for by ex-Governor Horatio Seymour, and also by the following gentlemen, who have an established reputation in the profession of civil engineering, namely: Thomas C. Clark, Washington A. Roebling, S. H. Sweet, Charles H. Haswell, Egbert L. Viele, Alfred P. Boller and many others.

From the papers on file with this bill, and from the report of the legislative committee of this year, it seems that Charles T. Harvey, many years since, was, if not the

originator of the method which seemed much to solve the long mooted and important question of rapid transit, at least the perfecter of a plan that was afterward of great utility and in a large measure assisted in giving the present rapid transit facilities to the city of New York.

The moneys directed to be disbursed under this bill belongs to a special fund accumulated by payments made by the elevated railroads of that city, in pursuance of the original acts authorizing their construction, by which acts the use of said fund was limited to certain purposes, mainly for the repairing of the streets and roadways which it was then thought would be seriously injured by reason of the construction and operation of such railroads. During the years in which they have been operated I am informed it has not been found necessary to expend a dollar of this fund for the purposes contemplated, and it seems probable that none of it will ever be to any extent needed therefor.

The purpose of this bill is to provide means whereby Mr. Harvey can further develop plans for rapid transit, which it is claimed he has already brought to greater perfection; and the approval is urged for that reason, and further, as a matter of justice to one who has been so largely instrumental in giving to that city its present system. It seems to me that there is great force in these reasons, and the language of ex-Governor Seymour clearly states the proposition when he says: "The city has had almost exclusively the benefit of elevated railroads. The legislative reports and laws show that Mr. Harvey was encouraged to persevere in his effort to improve that system of transit. I think no one can read these reports without feeling that the honor of the State demands that compensation be made to Mr. Harvey."

It is universally admitted that increased facilities for rapid transit are imperatively demanded in the city of New York. Personal observation of the means now afforded, and considerable study and attention given to this subject, have convinced me of the inability of the system in its present condition to give the relief needed. Some careful legislation in the interests of the people in the direction indicated is undoubtedly demanded. In the meantime it appears entirely proper that a fund, coming as this does from the income or earnings of the system itself, should be used in its further development and in doing justice to Mr. Harvey, especially as it does not cost the taxpayer of the city of New York a single dollar.

In the hope that this measure will aid in supplying a conceded want of the city of New York, and because of the high personal and professional character of the gentlemen familiar with the subject of, and recommending this legislation, I have decided to approve the bill.

DAVID B. HILL.

MEMORANDUM FILED WITH ASSEMBLY BILL No.  
720, CONCERNING A DELEGATE TO THE INTER-  
NATIONAL PRISON CONGRESS. APPROVED.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, June 13, 1885. }

*Memorandum filed with Assembly bill No. 720, entitled "An Act to authorize the appointment of a delegate to the international prison congress, and to provide means for the same." Approved.*

The amount of money which this bill permits to be expended seems unnecessarily large, and I have grave doubts whether the State will be benefited by the sending of a delegate to this congress. The demands upon my time have prevented anything but a hasty examination of the subject. Inasmuch as the bill merely authorizes the appointment of a delegate by the Executive, I affix to it my signature, with this official statement: That I reserve the right not to make the appointment, if upon a careful examination I deem it superfluous, and that in case it is deemed wise to send a delegate, the amount of money to be spent by him is to be limited to a proper sum, which shall be much less than the amount appropriated.

DAVID B. HILL.

MEMORANDUM FILED WITH SENATE BILL No.  
176, AUTHORIZING THE TOWN OF HANCOCK  
TO COMPROMISE RAILROAD INDEBTEDNESS.  
APPROVED.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, June 13, 1885. }

*Memorandum filed with Senate bill No. 176, entitled "An Act to authorize the town of Hancock, in the county of Delaware, to compromise, retire, pay, purchase or refund outstanding bonds and coupons heretofore issued in the name and on the credit of such town to aid in the construction of the New York and Oswego Midland Railroad." Approved.*

I do not quite like the phraseology of this bill. Its friends claim, however, that it leaves the exercise of the powers conferred by it within the discretion of the town board. Assuming that view of the bill to be correct, I have, with some reluctance, approved it.

It will leave the compromise of its town bonds within the discretion of the local authorities of the town, who, it is believed, will not act contrary to the wishes of the taxpayers.

The provision with reference to the exemption of the new bonds from taxation, is objectionable. Precedent has been established in other cases for the relief of towns suffering under a burden of railroad taxation, and the precedent is reluctantly followed in this case because the bill cannot now be amended.

DAVID B. HILL.

MEMORANDUM FILED WITH ASSEMBLY BILL No.  
730, FOR THE RELIEF OF THE SUNDAY MER-  
CURY. APPROVED.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, June 13, 1885. }

*Memorandum filed with Assembly bill No. 730, entitled "An Act for the relief of the proprietor of the Sunday Mercury and New York Mercury." Approved.*

I would have preferred that this account should have been referred to the Board of Estimate and Apportionment, and not to a single officer. Had it been a claim for unliquidated damages I should have refused approval to the bill, and insisted that the course referred to should be followed. Inasmuch as this is a claim for liquidated damages, and only authorizes the Comptroller to examine the justice of the claim, and merely authorizes the Board of Estimate and Apportionment to make any appropriation which the Comptroller may deem justly due, I reluctantly give my approval to the measure. There are numerous precedents in the enactments of former Legislatures for this course.

DAVID B. HILL.

MEMORANDUM FILED WITH ASSEMBLY BILL No.  
638 — THE BROOKLYN ELEVATED RAILROAD  
BILL. APPROVED.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, June 13, 1885. }

*Memorandum filed with Assembly bill No. 638, entitled "An Act to amend chapter 585 of the Laws of 1874, entitled 'An Act to incorporate the Brooklyn Elevated Silent Safety railway for the purpose of providing rapid transit through the city of Brooklyn, Kings county, to Woodhaven, in the town of Jamaica, in the county of Queens and the State of New York, and to provide for constructing and operating a railway therefor' and the acts amendatory thereof, and to amend chapter 459 of the Laws of 1880, entitled 'An Act to restrict and regulate the right of the Brooklyn Elevated railway to lay their rails easterly of Schenck avenue, and to and through Woodhaven avenue, in the town of Jamaica, county of Queens.'" Approved.*

I have approved this bill upon the faith of certain resolutions passed by the Brooklyn Elevated Railroad Company agreeing to charge the sum of five cents only as fares at all hours within the limits of the city of Brooklyn, and which resolutions have this day been filed in the office of the Board of Railroad Commissioners of the State.

I believe that the railroad company will faithfully carry out their resolutions, and that the public will thereby be greatly benefited by this bill. If for any reason they should fail to do so, and the agreement should not be

enforceable in the courts by the Railroad Commissioners, the Legislature can easily supply the remedy.

DAVID B. HILL.

MINUTE OF THE DIRECTORS OF THE BROOKLYN ELEVATED RAILROAD COMPANY, FILED WITH THE RAILROAD COMMISSIONERS.

At a meeting of the board of directors of the Brooklyn Elevated Railroad Company, held at the office of the company No. 49 Fulton street, in the city of Brooklyn, on the thirteenth day of June, 1885, a quorum being present, it was unanimously resolved as follows : Whereas, a bill has passed the Legislature known as Assembly bill No. 638, and now awaits the signature of the Governor ; and, whereas, said bill contains three sections, one of which amends the present charter of the company in respect to the collection of fares from passengers, the second of which extends the time of building the road eastwardly from Schenck avenue for five years, and the third of which extends the time for the completion of the rest of its railroad for three years ; and, whereas, it appears that objection has been made to the enactment of the provisions in respect to fares ; Resolved, that in order to obviate any objection to the signature of said bill by the Governor and for the purpose of securing his signature thereto, the Brooklyn Elevated Railroad Company hereby covenants and agrees with the Railroad Commissioners of the State of New York that notwithstanding the passage of said bill and its signature by the Governor and its enactment as a law, the company will limit the fare for passengers within the limits of the city of Brooklyn to the sum of five cents for each passenger, and no more than that sum, at all hours, and that it will maintain such rate of fare within said limits until the same shall be changed, modified or regulated by the Legislature of the State of New York ; further Resolved, that in order to carry this resolution into effect the company will hereafter make, sign, seal, execute and deliver a formal contract or agreement with the Railroad Commissioners of the State of New York.

We hereby certify the foregoing to be a true extract from the minutes of the board of directors of the Brooklyn Elevated Railroad Company, the successor company of the Brooklyn Silent Safety Railway Company.

BROOKLYN ELEVATED RAILROAD CO.,

[L. S.]

By C. J. G. HALL, *Vice-President.*

Attest :

ELBERT SUDEKER, *Secretary.*

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#### LIST OF BILLS UNSIGNED.

The following bills, remaining in the Governor's hands at the time of the adjournment of the Legislature, did not receive the Governor's approval within thirty days, and therefore failed to become laws :

1. A. 322. — Criminal Procedure, Code amending. (Sec. 872, relative to certificates of conviction.)
2. A. 746. — Printing reports of State institutions, etc.
3. A. 112. — Corporations, bankrupt, relative to receivers of.
4. A. 363. — School district officers, amending act relative to election of.
5. S. 275. — Deaf mutes, care and education of, act relative to, amending.
6. A. 171. — Revised Statutes, amending, directing Comptroller to publish detailed statement of all warrants.
7. A. 149. — Supervisors in Monroe and Orleans counties, to fix the compensation of.
8. A. 508. — Owego, village of, relative to electric light for.
9. S. 329. — New York city, Cedar park, discontinuing proceedings relative to.
10. A. 284. — Silver Creek, village of, authorizing trustees to straighten Walnut creek.

11. A. 87. — Superintendents of the poor, amending act relative to appeals from decisions of.
12. A. 277. — Fulton county, amending act relative to the relief of the poor in.
13. S. 48. — Amending game laws relative to killing of wild fowl and fish.
14. S. 81. Debtors, assignment of estate of, amending, relative to.
15. S. 220. — Corporations, for manufacturing, etc., purposes, amending chapter 40, Laws of 1848, relative to.
16. S. —. — Rome, city of, amending act incorporating, relative to board of education.
17. S. 372. — Long Island city, repealing section five of act reducing expenses of.
18. A. 690. — Fort Covington, relative to annual meeting of Union Free School District No. 1.
19. A. 295 — Drainage of swamps and other lands, amending Revised Statutes relative to.
20. A. 414 — Lenox, town of, extending boundaries of Union School District No. 25.
21. A. 757. — New York city, board of fire commissioners to appoint deputy inspector of buildings.
22. S. 284. — New York city, amending maps in Twenty-third ward by omitting part of College avenue.
23. S. 310. — Session laws, amending act providing for publication of, in two newspapers in each county.
24. S. 296. — Poor, overseers of, relative to the compensation of.
25. S. 408. — Liberty Normal Institute, amending act incorporating.
26. A. 131. — Mechanicville, providing for construction of lift bridge over Champlain canal in.
27. A. 234. — Notaries public, providing for additional number of, etc.
28. A. 495. — Water, amending act authorizing villages to furnish pure and wholesome, to the inhabitants thereof.
29. A. 139. — Contracts, requiring public notice to be given of certain State.

30. A. 72. — New York city, consolidation act, amending sections 824 and 829, in reference to Montefiore Home for Invalids and canal boat pier in East river.
31. A. 202. — New York city, comptroller to examine claim of John Donnelly.
32. A. 624. — Newark, village of, providing for erection of canal bridge in.
33. A. 662. — Insurance companies, town, amending act authorizing formation of.
34. A. 451. — Franklin county, lands in, authorizing Commissioners of the Land Office to convey to Robert Schroeder.
35. A. —. — Revised Statutes, amending section 78 of part II, chapter 1, title II, article 2, in relation to uses and trusts.
36. A. 819. — Patriotic Tract Society, to incorporate the.
37. A. 673. — New York city, relative to claim of John C. Ham.
38. A. 475. — Cigarettes, to prohibit sale of, to minors under the age of fourteen years.
39. A. 393. — Medical students, to prescribe the preliminary education of.
40. A. 735. — Civil Procedure, Code of, section 757, amending, relative to continuance of suit against estate of party deceased.
41. A. 283. — Brooklyn, city of, amending charter of, in reference to fire department pension fund.
42. A. 501. — Game laws, amending section 23 of chapter 534 of Laws of 1879.
43. A. 838. — New York city, providing for appointment of inspectors of weights and measures in.
44. A. 59. — Firm names, fictitious, amending act to prevent persons from transacting business under.
45. A. 829. — New York city, authorizing the comptroller to examine and audit the claim of John O'Connor.
46. A. 143. — Brooklyn, city of, for the better protection of public parks in.
47. A. 738. — Code of Civil Procedure, amending section 190, defining jurisdiction of Court of Appeals.

48. A. 770. — Brooklyn, city of, repealing section of act exempting from provisions of act authorizing gas-light companies to use electricity instead of gas in lighting street, etc.
49. A. 163. — Insane, amending act relating to care and custody of, etc., in section six, relating to charges upon counties.
50. A. 706. — Corporations, amending act to authorize formation of, for manufacturing, mining, mechanical or chemical purposes.
51. A. 208. — New York city, to authorize the Comptroller to hear and determine the claim of Martha Krenkel, administratrix of Kasmire Krenkel, deceased.
52. A. 785. — Wellsville, village of, legalizing official acts of Brigham Hanks, as police justice of the.
53. A. 422. — Binghamton Asylum for the Chronic Insane, providing for appointment of additional assistants for.
54. S. 354. — Vagrants and other criminals, to authorize courts and magistrates to sentence to hard labor in the county jail.
55. S. 347. — New York city, consolidation act, amending section 1275, relative to salaries of court officers.
56. S. 209. — New York city, authorizing Metropolitan Transit Company to discontinue its main line north of One Hundred and Twenty-fifth street, and change location of bridge across Harlem river.

DECISION IN THE EXTRADITION CASE OF  
FRANCIS H. CARTER.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, July 10, 1885. }

*In the Matter of the Extradition of Francis H. Carter, alias  
Francis McDonald, commonly called "Big Frank." Decision.*

The Governor of Delaware has issued a requisition upon the Governor of New York asking for the return to the State of Delaware of the individual above named. The papers accompanying the requisition show that the party named was convicted of a felony in Delaware in December, 1873, and sentenced to imprisonment for "ten years," which imprisonment was declared "to commence December 10, 1873, and to end December 9, 1883." The prisoner served only a portion of his sentence, and on September 3, 1877, escaped from prison and fled to this State, and has just been arrested in New York city, awaiting the decision of this application. Col. John O'Byrne appears as counsel for the prisoner, and raises several technical objections, and also the further objection that the period for the imprisonment having expired, the prisoner cannot now be returned to prison. The technical defects in the papers have been remedied, leaving only the question to be decided whether an escaped convict can be returned to prison and compelled to serve out the remainder of his sentence after the expiration of the period for which he was sentenced.

The question is to be determined by the laws of the State of Delaware, and it being conceded that there is

no statute of that State affecting the point, it must be controlled by the rule of the common law.

It is laid down in Hale's Pleas of the Crown (vol. 1, page 602,) that if a felon escape, the officers may retake him "at any time after." The reason of the rule is stated to be that "the felon shall not take advantage of his own wrong." Agreeable to this principle, it has been frequently held that where a prisoner escapes and remains at large for a time, he must, by the common law, serve after his recapture for a period equal to that part of his term of sentence which had not yet run at the time he escaped. (1 Bish. Crim. Proc., 3d ed., secs. 1382-1385.)

The same doctrine is declared in the case of *Ex parte Edwards* (3 Crim. Law Magazine), where, in an elaborate and able opinion by Van Syckel, J., all the authorities upon this subject are reviewed. The cases seem to regard it as entirely immaterial whether the recapture occurs before or after the expiration of the period of the sentence.

But there are a few decisions directly in point. In the following cases it was held that the convict could be returned to prison, although the term of the sentence had fully expired before his recapture: *Cleek v. The Commonwealth* (31 Gratt. 777); *State v. Cockerham* (2 Ired. L. 204); *Ex parte Clifford* (29 Ind. 106); *Dolan's Case* (101 Mass. 219); *Hallan v. Hopkins* (21 Kan. 638).

These decisions were based upon the common law, and seem to be conclusive of the question involved.

The sentence must be held to be for ten years; and the statement in the record that it is to commence at a certain time and to end at a certain time is to be construed as a description of the period of the imprisonment of ten years, without reference to the particular dates named. The

sentence can only be complied with and performed by imprisonment for the full period of ten years, no matter when it commences or when it shall end, so long as only the full period of ten years' imprisonment is actually suffered. It follows, therefore, that the accused must be returned to the authorities of Delaware.

DAVID B. HILL.

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AFFIDAVIT AS TO THE HOUR OF SIGNING  
CHAPTER 456, LAWS OF 1885.

STATE OF NEW YORK, }  
*City and County of Albany.* } ss. .

William G. Rice, being duly sworn, deposes and says that he is the private secretary to the Governor of the State of New York, and that there has been exhibited to him an order by Judge Donohue, dated July 21, 1885, requiring his deposition in the matter of the time of the signing of chapter four hundred and fifty-six of the Laws of eighteen hundred and eighty-five, and in pursuance of said order, deposes and says that he recollects the fact of the signing of said bill known as chapter four hundred and fifty-six of the Laws of eighteen hundred and eighty-five, and that to the best of his knowledge said bill was signed by the Governor about five o'clock in the afternoon of the ninth of June, eighteen hundred and eighty-five.

WILLIAM G. RICE.

Sworn to before me, this }  
23d day of July, 1885. }

[L. s.]

T. NEWCOMB,

*Notary Public, County of Albany, N. Y.*

PROCLAMATION ANNOUNCING THE DEATH OF  
GENERAL GRANT.

STATE OF NEW YORK,        }  
EXECUTIVE CHAMBER.        }

Ulysses S. Grant, twice President of the United States, the defender of the Union, the victorious leader of our soldiers, and general on the retired list of the army, is dead.

To the last he was the true soldier—strong in spirit, patient in suffering, brave in death. His warfare is ended.

After the close of his official life, and following that notable journey around the world, when tributes of esteem from all nations were paid him, he chose his home among the citizens of our State. He died upon our soil, in the county of Saratoga, overlooking scenes made glorious by revolutionary memories.

It is fitting that the State which he chose as his home should especially honor his memory. The words of grief and the tokens of sorrow by which we mark his death shall honor, too, the offices which he held, and proclaim that praise which shall ever be accorded to those who serve the republic.

Therefore, it is hereby directed that flags on the public buildings of the State be placed at half-mast until his burial. And on that day, yet to be appointed, all ordinary business in the Executive Chamber and in the departments of the State Government will be suspended.

The people of the State are called upon to display, until his funeral, emblems of mourning, and it is requested that,

at that hour, they cease from their business and pay respect to the distinguished dead.

Given under my hand and the privy seal of the State of New York, at the Capitol in the [L. s.] city of Albany, this twenty-third day of July, in the year of our Lord one thousand eight hundred and eighty-five.

DAVID B. HILL.

By the Governor:

WILLIAM G. RICE,  
*Private Secretary.*

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## LETTER TO COLONEL GRANT.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,  
ALBANY, July 24, 1885. }

Col. FRED. D. GRANT, *Mount McGregor, N. Y. :*

COLONEL. — On behalf of the citizens of the State of New York I have respectfully to request that the body of General Grant may be permitted to lie in state at Albany for at least one day. For this purpose I tender the use of the Capitol and will duly order such military escort as shall be appropriate.

I trust the family of the dead soldier may deem it possible to accede to this request, and so allow the people of the State an opportunity, at their Capitol, to pay respect to the distinguished dead.

Col. John S. McEwan, Assistant Adjutant General, is the

bearer of this letter, and will, for me, confer with you as to the arrangement of details.

With sincere sympathy,

Very truly yours,

DAVID B. HILL.

## APPOINTMENT OF A STATE VETERINARIAN.

STATE OF NEW YORK,

EXECUTIVE CHAMBER.

Professor James Law, of Cornell University, Ithaca, N. Y., is hereby appointed to act, without expense to the State, as State Veterinarian for the State of New York, in cases where the regulations of States or Territories require the certificate of a State Veterinarian.

DAVID B. HILL.

Governor.

ALBANY, *July* 24, 1885.

LETTER TO THE MEMBERS OF THE LEGISLA-  
TURE, SUGGESTING SUITABLE ACTION IN  
REFERENCE TO THE DEATH OF GENERAL  
GRANT.

STATE OF NEW YORK.

EXECUTIVE CHAMBER.

ALBANY, *July* 27, 1885.

*To the Members of the Legislature :*

The remains of General Grant will arrive in Albany on Tuesday, August fourth, next, at four P. M., and lie in

state at the Capitol until the next day at noon, when they will be taken to New York to await the burial which is to occur in that city on the following Saturday.

It is suggested as eminently appropriate that the Legislature should informally assemble at the Capitol, on Tuesday, August fourth, next, at four P. M., at the reception of the remains and participate in the exercises on that occasion, and if deemed desirable, to take such action during that evening as may suitably express the sentiments of our State in regard to the distinguished dead, and afterwards to accompany the remains to New York and attend the funeral in a body.

The Members of the Legislature who approve of this suggestion will please be present at the time named.

DAVID B. HILL

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PROCLAMATION APPOINTING THE DAY OF GENERAL GRANT'S FUNERAL A LEGAL HOLIDAY.

STATE OF NEW YORK,                    }  
EXECUTIVE CHAMBER.                }

*Whereas*, The funeral of the late General Grant has been appointed for Saturday, the eighth day of August next; and

*Whereas*, The whole people of the State are desirous of laying aside their usual occupations at that time to do homage to his memory, and it is fitting that such day should be a public and legal holiday;

*Therefore*, In pursuance of the power in me vested, I hereby appoint and set apart Saturday, the eighth of August next, as a day for such religious observance as

may be appropriate to the burial of the distinguished dead, and said day is hereby declared a legal holiday.

Given under my hand and the privy seal of the State,  
at the Capitol in the city of Albany, this twenty-  
[L. S.] ninth day of July, in the year of our Lord one  
thousand eight hundred and eighty-five.

DAVID B. HILL.

By the Governor :

WILLIAM G. RICE,

*Private Secretary.*

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#### RULES GOVERNING APPLICATIONS FOR EXTRADITION.

STATE OF NEW YORK,                    }  
EXECUTIVE CHAMBER.                }

The following rules will be observed by the Governor of the State of New York in reference to applications for requisitions on Governors of other States and Territories, and the Chief Justice of the Supreme Court of the District of Columbia. (U. S. R. S., sec. 5278; R. S., relating to the District of Columbia, sec. 843.)

The application must be made by the district attorney of the county in which the offense was committed, and must be in duplicate original papers, except indictments, which must be certified copies.

The following must appear by the certificate of the district attorney :

(a.) The full name of the person for whom extradition is asked, together with the name of the agent proposed,

to be accurately spelled, in roman capital letters, for example: JOHN DOE.

(*b.*) That in his opinion the ends of public justice require that the alleged criminal be brought to this State for trial, at the public expense, and that he is willing that such expense be a charge on the county in which the crime was committed.

(*c.*) That he believes he has sufficient evidence to secure a conviction of the fugitive.

(*d.*) That the person named as agent is a proper person, a public officer (naming his official position), and that he has no interest in the arrest of the fugitive.

(*e.*) If there has been any former application for a requisition for the same person growing out of the same transaction, it must be so stated, with an explanation of the reasons for a second request, together with the date of such application, as near as may be.

(*f.*) If the fugitive is known to be under either civil or criminal arrest, the fact of such arrest and the nature of the proceedings on which it is based must be stated.

(*g.*) That the application is not made for the purpose of enforcing the collection of a debt, or for any private purpose whatever, and that if the requisition applied for be granted, the criminal proceedings shall not be used for any of said objects.

(*h.*) That all papers in duplicate have been compared with each other and are, in all respects, exact counterparts.

(*i.*) Whether the offense charged is a felony or a misdemeanor, with a concise definition thereof, and a particular reference to the statute, giving chapter, title, article, page and section, together with any amendments thereto, defining the offense and stating the punishment therefor.

(j.) When more than one year has elapsed since the commission of the crime, a full explanation must be given, and upon an application where no indictment has been found, the reasons therefor must be stated.

1. In cases of false pretenses, embezzlement or forgery, and all offenses known as such prior to the enactment of the Penal Code, the affidavit of the principal complaining witness or informant that the application is made in good faith, for the sole purpose of punishing the accused, and that he does not desire or expect to use the prosecution for the purpose of collecting a debt, or for any private purpose, and will not directly or indirectly use the same for any of said purposes.

2. Proof by affidavit of *facts and circumstances* satisfying the Executive that the alleged criminal has fled from the justice of the State, and is in the State on whose Executive the demand is requested to be made, must be given. No mere unsupported allegation will be received or accepted as conclusive upon this point. In addition to the *facts and circumstances* required, it must affirmatively appear what the occupation of the accused at the time of flight was; whether he was a resident or only in the State transiently; whether he was married; when the alleged fugitive left the State, and in general the previous history of the accused so far as it can be ascertained; in short, the affiant's reasons for his belief that the accused is a fugitive from justice, and whether he is in the surrendering State transiently, or making it his residence, and his occupation therein. If the affidavit be not made by the district attorney or some public officer, the district attorney must certify that the affiant is a respectable person and entitled to credit.

3. If an indictment has been found, certified copies, in duplicate, must accompany the application.

4. If an indictment has not been found, the *facts and circumstances* showing the commission of the crime charged, and that the accused perpetrated the same, must be shown by depositions taken before a *magistrate* (a notary public is not a magistrate within the meaning of the statutes) in support of an information which must always be furnished in such case, and no application will be received or considered which is based on an information standing by itself. Conclusions will not be considered except in connection with the facts and circumstances from which they are drawn.

5. If the crime of forgery is charged, an affidavit of the person whose name is alleged to have been forged, must be produced, or its absence satisfactorily explained.

6. If the crime charged is seduction, corroborative evidence must be furnished by affidavit of one or more witnesses taken before a magistrate, whether an indictment has been found or not.

7. Except as to the whereabouts of the accused, the sources of information and belief stated must be given and the reason why such information is not verified by the person possessing it stated.

8. It should be shown that a warrant has been issued, and duplicate certified copies of the same, together with the returns thereto, must be furnished upon an application.

9. In all cases of extradition, where the fugitive is beyond the jurisdiction of the United States, the application must, in the first instance, be presented to the Governor. All such papers must be presented in *triplicate*, and conform to the foregoing rules. The triplicate copies must each be certified by the *magistrate*, and must each contain

a. copy of the information, of the depositions in support thereof, and of a *warrant* issued thereon against the accused for the offense charged. Triplicate copies of *all* papers are absolutely necessary. In foreign countries indictments are not recognized and are absolutely useless.

In Canadian extradition each of the three sets of the papers required must contain one of the three triplicate copies of the information, depositions and one of the three *triplicate original* warrants issued thereupon; also each original warrant must be accompanied by a copy of itself and all certified in the form given on page 145, sixth Moak's English Reports. Follow closely the practice given in this volume, pages 144-147.

A copy of the rules governing United States extradition will be furnished on application to the State Department at Washington.

10. Applications will not be considered unless it affirmatively appears the alleged fugitive was in this State at the time of the commission of the offense. Constructive fleeing from justice is not within the extradition laws.

11. The official character of the officer taking the affidavits or depositions and of the officer who issued the warrants must be duly certified.

12. The district attorney asking a requisition must, within six months, unless sooner requested, after it is issued, make a return, accompanied by the affidavit of the agent named therein, fully stating all proceedings had thereunder and upon the information or indictment on which the same was based.

13. The Governor of this State will deliver over to the Executive of any other State or Territory persons charged therein with crime, only when the demand is accompanied

by documents and proofs which are in accordance with the extradition laws.

14. Upon the renewal of an application, for example: on the ground that the fugitive has fled to another State, not having been found in the State on which the first was granted, new papers in conformity with the above rules must be furnished.

15. All rules heretofore issued from the Executive Chamber, in the matter of the extradition of fugitives from justice, are hereby abrogated.

Approved August 1, 1885.

DAVID B. HILL,  
*Governor.*

## LETTER TO THE COMMISSIONERS OF EMIGRATION IN THE CASE OF FAWCETT.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,  
ALBANY, October 5, 1885. }

Messrs. EDMUND STEPHENSON, CHARLES F. ULRICH, CHARLES N. TAINTOR *and others, Commissioners of Emigration:*

GENTLEMEN. — I have received the communication from your Board, dated September twenty-fifth, last, giving your reasons for the recent discharge of the soldier Fawcett, an employe in your department, and have carefully considered the same.

There does not seem to be any real dispute as to the facts. The force was reduced in the interest of economy, and the soldier Fawcett was among the first discharged, while many civilians were retained. The question presented is whether such action was not a violation of the

law which entitles soldiers to a preference. (Chap. 312 and 410 of the Laws of 1884.)

I think the spirit of the law requires that a preference shall be given to soldiers not only in their original employment, but in their retention. If they are competent to discharge their duties, they should be the first to be employed and the last to be discharged. Such a construction is in accordance with the true purposes of the law.

It is immaterial whether some civilians may not be better qualified to fill the position than Fawcett. The question of superiority is not to be considered. If he is competent to properly and satisfactorily discharge the duties, he should have been retained. I find that after his discharge you gave him the following certificate:

“CASTLE GARDEN,                    }  
“NEW YORK, August 28, 1885.” }

“To whom it may concern:

“This is to certify that Mr. John W. Fawcett was employed at Castle Garden for a period of three years and seven months as gate-keeper, and performed the duties assigned to him faithfully and efficiently. Owing to a reduction in the number of employes his services were dispensed with on the first instant.

“(Signed)                   H. J. JACKSON,  
“Superintendent.”

This certificate must be deemed to settle the question of his entire competency.

While, of course, a reasonable discretion on the part of the appointing power must necessarily be permitted to be exercised upon the question of employes possessing the necessary qualifications, yet, when that fact is conceded, the duty of enforcing the preference given to soldiers must not be evaded.

It is evident to me that the law has been violated in the discharge of Fawcett, and, in accordance with my duty to see that the laws of the State are enforced, I must direct that he be forthwith reinstated.

Very respectfully,

DAVID B. HILL,

*Governor.*

CONVICT LABOR—LETTER TO THE MANAGERS  
OF THE STATE REFORMATORY.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, September 14, 1885. }

*To the Board of Managers of the State Reformatory :*

Information having reached me, unofficially, that the statute of 1884, entitled "An Act in relation to contract labor," was being violated in the construction of the new workshops and south wing of the reformatory building, I, on September first, instant, sent Mr. David Y. Havens, of Albany, as a special commissioner to investigate the matter, and to report the facts to me as ascertained by him. He accordingly proceeded to Elmira, and, after making an investigation, has returned to me a communication signed by the superintendent and countersigned by your secretary, purporting to give a correct "statement of facts" relating to the employment of convicts upon such work. After a careful consideration of such communication, I have reached the conclusion that the employment of such convicts, under the circumstances stated therein, if not a violation of the strict letter of the statute, is clearly a violation

of its spirit, or, at least, a palpable and unjustifiable evasion of the act, which cannot be permitted.

The statute forbids the making of any contract whatsoever for the employment of convicts. This includes contracts both express and implied, written or oral. The statute was enacted for the purpose of preventing the labor of convicts being brought into competition with honest outside labor. Its wisdom is not to be questioned. So long as it remains upon the statute books it must be strictly and in good faith enforced.

The peculiar arrangement which is stated has been entered into with the contractors, by which a considerable number of prisoners are to be employed generally upon the work, and, at its completion, an adjustment is to be made whereby the State is to be credited for whatever labor it has furnished to the contractors, and they are to be allowed for whatever extra work they may do, and then a balance is to be struck and the difference paid, must be regarded as an ingenious contrivance, the legitimate effect of which, however, is to nullify the law. If such an arrangement is authorized, it follows that convicts can be let out to contractors upon public works of the State, and their labor be brought into direct competition with outside labor to any extent that may be desired, and there would be no remedy. I do not take this view of the statute.

It being my duty to see that the laws of the State are enforced and regarding the arrangement which you have entered into with the contractors as unwarranted by law, I must direct that the employment of convicts upon the contract in question under such arrangement shall henceforth cease.

DAVID B. HILL,

*Governor.*

IN THE MATTER OF THE REQUISITION OF WILLIAM S. ROBERTS.—LETTER TO THE SUPREME COURT OF THE UNITED STATES.

SUPREME COURT OF THE UNITED STATES.

*William S. Roberts, relator, v. Philip Reilly. No. 992,  
October Term, 1885.*

STATE OF NEW YORK, }  
EXECUTIVE CHAMBER. }

*To the Honorable the Supreme Court of the United States :*

*Whereas*, Heretofore and on April 15, 1885, an application was made to me by the Honorable Randolph B. Martine, district attorney of the city and county of New York, for a requisition on the Governor of the State of Georgia for the arrest and surrender of one William S. Roberts, an alleged fugitive from the justice of the State of New York, he having been charged by indictment with the crime of grand larceny in the first degree, committed in said city and county of New York ; and,

*Whereas*, I did, in pursuance of such request, so made as aforesaid, issue my requisition to the Governor of said State of Georgia, on April 22, 1885, for the arrest and surrender of and the return to this State of the said William S. Roberts, and on the said last named date did appoint one Philip Reilly as the agent of the State of New York for the purpose of delivering the said requisition to the said Governor of Georgia, and of returning the said William S. Roberts to this State ; and,

*Whereas*, It appears to my satisfaction that my requisition so issued as aforesaid for the return to this State of the said William S. Roberts was duly honored by the said

Governor of Georgia, and that he did, in pursuance thereof, issue his mandate, or warrant, for the arrest and surrender of the said William S. Roberts to the said Philip Reilly, duly appointed by me as aforesaid, as agent of the State of New York in the matter of said requisition; and,

*Whereas*, It appears to my satisfaction that the said William S. Roberts, through his agents or attorneys, has had recourse to the State courts of Georgia and the courts of the United States, by writs of *habeas corpus* and otherwise, for the purpose of having the warrant or mandate of the Governor of the said State of Georgia set aside, or for the purpose of regaining his liberty, of which he was deprived, in pursuance of the issuing of said warrant for his arrest and surrender as aforesaid; and,

*Whereas*, It appears to my satisfaction that an appeal has been taken, and allowed, to this court from the judgment of the Circuit Court of the United States, which affirmed the judgment of the District Court of the United States for the Eastern District of Georgia, which last mentioned judgment dismissed the said writ of *habeas corpus* sued out by said Roberts in said District Court; and,

*Whereas*, The People of the State of New York are the real parties defendant in this proceeding, the said Philip Reilly being the agent duly appointed by me, the Governor of the State of New York; and,

*Whereas*, It appears to my satisfaction that an appeal is now regularly on the docket of the said Supreme Court, and yet pending undetermined; and that the said relator is still at liberty; and,

*Whereas*, It is expedient that the said appeal be speedily heard and determined and the questions raised herein decided by this court; and,

*Whereas*, I have been requested by the Honorable Randolph B. Martine, the district attorney of the city and county of New York, as aforesaid, to approve of the proceedings heretofore had in the matter of the extradition of the said William S. Roberts from the State of Georgia, and to approve the application about to be made by him or on his behalf to the said Supreme Court of the United States to advance the said appeal on the ground that the State of New York is a party to said appeal, through its said agent or representative, Philip Reilly, and also to dismiss the said appeal and that justice may be speedily done ;

*Now, therefore*, I, David B. Hill, Governor of the State of New York, in view of the matters and things above set forth, do hereby approve of the proceedings heretofore had in the matter of the extradition of the said William S. Roberts, and do most respectfully petition this honorable court that the said appeal in said matter be heard as a preferred cause, or that the said appeal be dismissed in order that justice may be speedily done, and I do hereby authorize the said Randolph B. Martine, district attorney, as aforesaid, to take such proceedings as he may deem advisable in the premises to secure the enforcement of the requisition made by me, as aforesaid, and the due enforcement of the laws of this State.

Given under my hand and the privy seal of the State, at the Capitol in the city of Albany,  
[L. s.] this thirteenth day of October in the year of  
our Lord one thousand eight hundred and eighty-five.

DAVID B. HILL.

By the Governor :

WILLIAM G. RICE,

*Private Secretary.*

October 26, 1885, the above petition was granted and the cause placed on the preferred calender. November 20, 1885, cause argued. December 14, 1885, the Supreme Court of the United States affirmed the judgments of the lower courts.

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## RULES GOVERNING APPLICATIONS FOR RESTORATION TO CITIZENSHIP.

STATE OF NEW YORK.

EXECUTIVE CHAMBER. }

APPLICATIONS FOR RESTORATION TO CITIZENSHIP MAY BE MADE AT SUCH TIME AFTER DISCHARGE FROM IMPRISONMENT AS THE EXECUTIVE SHALL DEEM REASONABLE, UNDER THE FOLLOWING REGULATIONS :

I. All applications must be presented by petition, which should be written in a distinct hand, subscribed and sworn to by the applicant.

II. Give full name and *alias* in Roman letters, for example, JOHN DOE. .

III. The petition must give the following particulars of the conviction: 1. The place and county. 2. The crime. 3. The court. 4. Name of judge and district attorney, if known. 5. The date of sentence. 6. The day when received in prison. 7. The term. 8. The amount of deduction of sentence earned by good conduct. 9. The date of discharge. 10. The name of the prison or penitentiary. 11. Place of residence at time of conviction. 12. If convicted under an *alias*.

IV. The petition must state if any previous application has been made for restoration.

V. The certificate of prison officials upon discharge from prison, showing that the applicant earned deduction of sentence for good conduct, must be produced, or its absence satisfactorily explained.

VI. If the applicant has a family, the petition must so state.

VII. The petition must fully give the history and occupation of the applicant since his discharge from prison, to the date of the application.

VIII. The petition must be accompanied by letters from reputable persons, and employers, if any, who have been acquainted with the applicant since his discharge from prison, showing that he has lived a life of sobriety, industry and honesty, and that, if he has a family, he has faithfully cared for it to the best of his ability.

IX. Upon the renewal of an application, new papers in conformity with the above, must be furnished.

X. If the applicant has been convicted of an offense or offenses other than that for which he seeks restoration, he must so state, and give the particulars required by Rule III in each. A restoration to citizenship covers only the particular offense therein recited.

XI. By reason of the pressing engagements of the Governor during the session of the Legislature, and for thirty days thereafter, no application will be considered or decided during that period, but applications will be received at any time, and considered in the order of their presentation, after the period above mentioned.

XII. Applications must be indorsed with the name and post-office address (with street and number, if any), of the person with whom correspondence may be had concerning the restoration, and to whom the writ, if granted, may be mailed.

XIII. Papers must be separately prepared in accordance with the above rules for each applicant for restoration.

Approved *October 12, 1885.*

DAVID B. HILL.

FORM OF APPLICATION ANNEXED TO THE ABOVE RULES.

.....18

*To the Governor of the State of New York :*

I hereby make application for restoration to citizenship.

My full name is (GIVE NAME AND *alias* IN ROMAN LETTERS, FOR EXAMPLE, JOHN DOE. (*See Rule II.*).....

the name I gave on conviction was..... I was convicted in the county of..... of the crime of..... in the Court of..... Hon .....

Judge presiding; prosecuted by..... District

Attorney; sentenced.....18 ; received in.....

Prison, County Penitentiary,.....18 ; for the term

of.....yrs.,.....mos., fine, \$.....;

earned.....yrs.,.....mos.,.....days for good

conduct, and was discharged therefrom.....18 .

(*See Rule III.*) I have not been convicted of any other

offense, except as follows (IF CONVICTED OF ANY OTHER

OFFENSE OR OFFENSES, GIVE PARTICULARS AS REQUIRED BY

RULE X): .....

I made a previous application for restoration to citizenship on or about.....18 . (*See Rule IV.*) At

the time of my conviction I resided at (*See Rule III*)

.....

My history and occupation from the date of my discharge from prison to this date have been as follows (*See Rule VII*):

.....

Annexed hereto, and forming a part of this application, is my certificate of discharge from prison, showing that I earned a reduction of my sentence for good conduct therein (*See Rule V*): .....

and letters from reputable persons, among them those of my employers since my discharge from prison, who have

been well acquainted with me since that date, showing that I have lived a life of sobriety, industry and honesty (*See Rule VIII*), and that I have faithfully cared for my family to the best of my ability, which consists of the following persons (*See Rule VI*):.....

.....  
(Petitioner sign name here.)

STATE OF..... }  
COUNTY OF..... } ss. :

..... being duly sworn, says that the foregoing petition is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true. (*See Rule I.*)

.....  
(Petitioner sign name here.)

No..... Street.

Subscribed and sworn to before me, }  
this..... day of..... 18 }

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IN THE MATTER OF PHILIP NIVER, SUPERINTENDENT OF POOR.—ORDER TO SHOW CAUSE.

STATE OF NEW YORK.

EXECUTIVE CHAMBER, }  
ALBANY, October 15, 1885. }

*Whereas*, A committee of the board of supervisors of the county of Columbia have preferred charges of misconduct and malversation in office against Philip Niver

superintendent of the poor of said county, and upon such charges have requested the removal of the said Philip Niver from his said office, now therefore, it is hereby

*Ordered*, That the said Philip Niver show cause before me, at the Executive Chamber, in the Capitol at the city of Albany, on the twenty-sixth day of October, instant, at eleven o'clock in the forenoon of that day, why he should not be removed from his said office in accordance with the statute in such case made and provided.

[L. s.]

DAVID B. HILL.

By the Governor:

WILLIAM G. RICE,

*Private Secretary.*

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## THANKSGIVING PROCLAMATION.

STATE OF NEW YORK,

EXECUTIVE CHAMBER. }

Another year furnishes to the people of the State of New York ample occasion for the exercise of profound gratitude to God. The health of those within our borders has been conserved; domestic and social blessings have been vouchsafed to the great body of our citizens; commerce, agriculture and the mechanic arts have experienced an increased stimulus, and political rights have been enjoyed without infringement from any source.

Recalling these evidences of Divine favor, I, David B. Hill, Governor of the State of New York, do hereby set apart and appoint Thursday, the twenty-sixth day of

November, instant, as a day of public Thanksgiving to Almighty God, and I request its universal observance by the citizens of this commonwealth.

It is recommended that on that day all secular business be suspended, and that the people, with one mind and heart, assemble in their accustomed places of worship to give praise for the mercies of the year past, and to invoke a continuance of these mercies in the year to come.

And it is further recommended that the day be observed by domestic and social reunions, and by kindly offices of charity and good-will to those who in any way need our sympathy and help. The day thus spent, cannot fail to be pleasing to God, our Father, and profitable to us, His children.

Done at the Capitol in the city of Albany, this  
[L. s.] sixth day of November, in the year of our Lord  
one thousand eight hundred and eighty-five.

DAVID B. HILL.

By the Governor :

WILLIAM G. RICE,  
*Private Secretary.*

## IN THE MATTER OF PHILIP NIVER. — APPOINTMENT OF A COMMISSIONER.

STATE OF NEW YORK.

EXECUTIVE CHAMBER. }

*In the Matter of the Charges Preferred against Philip Niver,  
Superintendent of the Poor of the County of Columbia.*

Charges having been preferred against Philip Niver, superintendent of the poor of the county of Columbia, by Henry S. Ambler and others, constituting a special committee of the board of supervisors of said county, and a copy thereof having been served upon the said superintendent of the poor with notice to appear and show cause why he should not be removed from such office, and the said Niver having so appeared before me and filed his answer to the charges preferred herein ;

I do hereby appoint the Honorable Samuel D. Benedict, of the city of Schenectady, commissioner to take the testimony and the examination of witnesses as to the truth of said charges and to report the same to me, and also the material facts which he deems to be established by the evidence.

It is hereby further ordered, that said examination before such commissioner proceed with all convenient speed.

Given under my hand and the privy seal of the  
[L. s.] State, at the Capitol in the city of Albany, this  
ninth day of November A. D. 1885.

DAVID B. HILL.

By the Governor :

WILLIAM G. RICE,

*Private Secretary.*

PROCLAMATION ANNOUNCING THE DEATH OF  
VICE-PRESIDENT HENDRICKS.STATE OF NEW YORK,  
*EXECUTIVE CHAMBER.* }

Thomas A. Hendricks, Vice-President of the United States, formerly Governor and Senator of the great State of Indiana, distinguished as a pure patriot, and for many years one of the foremost statesmen of our country, is dead. The sudden closing of a life so honorable and illustrious, in the full vigor of manhood, and when just entering upon the discharge of the new duties to which the nation had called him, causes great sadness to the people of the State of New York and deserves appropriate and sorrowful recognition.

Now, therefore, it is hereby directed, as a mark of regard for the distinguished dead, that the flags upon the Capitol and upon all the public buildings of the State, including the armories and arsenals of the National Guard, be displayed at half-mast until and including the day of the funeral, and the citizens of the State, for a like period, are requested to unite in appropriate tokens of respect.

Given under my hand and the privy seal of the State, at the Capitol in the city of Albany, this  
[L. s.] twenty-seventh day of November in the year of our Lord one thousand eight hundred and eighty-five.

DAVID B. HILL.

By the Governor:

WILLIAM G. RICE,

*Private Secretary.*

## PROCLAMATION APPOINTING A SPECIAL ELECTION IN THE SIXTH ASSEMBLY DISTRICT, COUNTY OF NEW YORK.

STATE OF NEW YORK, }  
EXECUTIVE CHAMBER. }

*Whereas*, Due notice has been given of the death of William Hall, who was duly elected to the office of Member of Assembly for the Sixth Assembly District of the county of New York, on the third day of November, 1885; and,

*Whereas*, His right of office has ceased before the commencement of the term of service for which he was at that time elected; and,

*Whereas*, It is provided by the laws of this State that in such a case a special election shall be had.

*Now, therefore*, I, David B. Hill, Governor of the State of New York, in pursuance of the requirements of section 10, title 2, chapter 6, part 1 of the Revised Statutes of this State, do hereby order and proclaim that an election for Member of Assembly, in place of the said William Hall (the term of whose office will expire on the thirty-first day of December, 1886), be held in the Sixth Assembly District of the county of New York, on Tuesday, the twenty-ninth day of December, 1885, such election to be conducted in the mode prescribed by law for the election of Members of Assembly.

Given under my hand and the privy seal of the State,  
at the Capitol in the city of Albany, this third  
[L. s.] day of December in the year of our Lord one thousand eight hundred and eighty-five.

By the Governor:

DAVID B. HILL.

WILLIAM G. RICE,

*Private Secretary.*

IN THE MATTER OF THE EXCISE COMMISSIONERS—  
ORDER APPOINTING A COMMISSIONER.

STATE OF NEW YORK.

EXECUTIVE CHAMBER, }

*In the Matter of the charges against William P. Mitchell, Nicholas Haughton and John J. Morris, commissioners of excise of and for the city and county of New York.*

Charges having been preferred against William P. Mitchell, Nicholas Haughton and John J. Morris, commissioners of excise of and for the city and county of New York, by William R. Grace, Mayor of said city of New York, and a copy thereof having been served upon each and all the commissioners of excise aforesaid, with notice to appear and show cause why they should not be removed from said office of commissioner of excise, and the said William P. Mitchell, Nicholas Haughton and John J. Morris, having so appeared before me and filed each his answer to the charges preferred herein ;

I do hereby appoint John N. Beckley, Esq., of the city of Rochester, commissioner to take the testimony and the examination of witnesses as to the truth of said charges, and to report the same to me and also the material facts which he deems to be established by the evidence.

It is hereby further ordered that such examination before such commissioner proceed with all convenient speed.

Given under my hand and the privy seal of the State, at the Capitol in the city of Albany, this  
[L. s.] fourth day of December in the year of our Lord one thousand eight hundred and eighty-five.

By the Governor :

DAVID B. HILL.

WILLIAM G. RICE,

*Private Secretary.*

RULES OF THE EXECUTIVE CHAMBER FOR  
PRISON OFFICERS.STATE OF NEW YORK, }  
EXECUTIVE CHAMBER. }

The following rules are issued for the guidance of officers of the State Prisons, Penitentiaries, State Asylum for Insane Criminals, Reformatories and Houses of Refuge, in so far as they are applicable, in whole or in part, to these several institutions, and are based on the opinions of Attorneys General in construing the statutes and the practice obtaining in the Executive Chamber in matters pertaining thereto :

1. A term of imprisonment is deemed to have begun, for all purposes, on the day of the *actual* receipt in prison, and not on the day of sentence.

2. Not later than the fifth day of each month, a report of all convicts received during the previous month, in the form now in use, must be forwarded to the Governor. Their names, with any *aliases* they may have, must be *distinctly* written, and in the column headed "Remarks" must be stated the number of previous convictions and a brief description thereof, as far as known, of each convict. In case no convicts were received the previous month, a blank report must be forwarded.

3. Not later than the twentieth day of each month, a report must be made to the Governor, in the form now in use, of all convicts, with their names, and any *aliases* they may have, *distinctly* written, who, by reason of good conduct, will be entitled to a discharge the following month, and if no convicts are so entitled to be discharged, a blank report must be forwarded.

4. Commutation is estimated on the aggregation of all terms of imprisonment, irrespective of the offenses to which

a convict may have been sentenced, and where such term or terms equals or equal one year, commutation is allowed.

5. Where the expiration of the term in the reports for commutation under the statute falls on Sunday, the date of discharge must be fixed for the following Monday.

6. Where, for any reason, the commutation provided by law, or any part thereof, is recommended to be withheld from any convict, the reasons for such recommendation must appear in a report made on the usual commutation sheet, not later than the twentieth day of the month previous to the time such convict would have been entitled to be discharged, but for such recommendation.

7. Convicts must be discharged on the day of the actual expiration of the term as shortened by commutation under the statute, or of the sentence where commutation has been forfeited, and not on the day following, viz.: if a convict is received August 10, 1885, and his short or long term is one year, the date of discharge would fall on August 9, 1886, and not on August tenth. This rule is subject to Rule 5.

8. Statutory commutation is allowed to convicts transferred in the first instance from the State Reformatory to a State prison on the unexpired portion of their maximum term remaining after their transfer, with the exception of those who have escaped or attempted to escape, either at the prison or reformatory.

9. If a convict with more than one term escapes or attempts to escape, he forfeits statutory commutation only on the term during which he escaped or attempted to escape.

10. Where the sentence imposed is a fine, *or* to serve a number of days equal to the number of dollars imposed, no commutation is allowed.

11. Where the sentence is a term of imprisonment *and* a fine, in default of the payment of which a convict is to serve a number of days equal to the number of dollars imposed, commutation is only allowed on the *term*, and not on the number of days imposed in lieu of the fine. In such a case a convict must be reported for commutation the month previous to the expiration of his term of imprisonment, less deduction earned

for good conduct, but the date of discharge must be fixed by adding to the term thus shortened the number of days in lieu of the fine. If, after such commutation, the whole or any part of such fine is paid or remitted, the convict may be discharged as many days sooner as dollars of the fine have been paid or remitted, and in such case the actual date of discharge must be immediately forwarded to the Governor.

12. On the request of the Governor, a report of a convict, with his name and any *aliases* he may have, accurately spelled in Roman letters, for example, JOHN DOE, must be furnished, without delay, containing the record of conviction, health, conduct, etc., in the form now in use. If the convict is known to have been previously convicted, such offense or offenses must be described, with dates, records, etc., as near as may be. If the convict is in fair or good health, the fact may be briefly stated. If otherwise, a special report of the physician of the prison must be furnished, with a statement as to whether there is any immediate prospect of death. But a special report of the physician must only be made on the request of the Governor of the Superintendent of State Prisons.

13. If the convict, at the time of the request for a special report, has been drafted to any other prison, the date of such draft, name of prison, and the convict's record before draft must be given, and the request for such report forwarded to such other prison, and the officers of the latter prison are to consider it as having been forwarded from the Executive Chamber.

14. If, after a special report is requested and made, a convict is either drafted to some other prison, escapes, or has otherwise forfeited commutation, discharged by order of the court, paroled, or absolutely released (State Reformatory), discharged by expiration of long or short term, died, badly injured, or become dangerously ill, such fact or facts must be immediately forwarded to the Governor, with dates.

15. Where reports are requested in cases of discharged convicts, as in the matter of restoration to citizenship, observe Rules 12 and 13, as far as applicable.

16. When any convict is pardoned or commuted, the order will be mailed directly to the chief officer, except in special cases, when it may be delivered by a specially authorized messenger. An official communication notifying said officer of the granting of the order, will accompany it. The receipt of the order must be immediately acknowledged. If the order be a pardon, the convict named therein must be forthwith discharged, except as hereinafter provided. If the order contain a condition, such condition must be read to the convict, and it must be ascertained if he freely assents to the same. If he does so assent, such assent must be reduced to writing, signed by the convict, and attested by two witnesses, before his discharge, and be immediately forwarded to the Governor. If the convict does not assent, the order must be immediately returned to the Governor, with a communication notifying him of the fact. The date of a convict's discharge, under a pardon order, must be forwarded to the Governor, without delay.

17. Where a convict escapes or attempts to escape, a full report of the facts and circumstances, together with the names of the persons cognizant thereof (in cases where the term or terms equals or equal two years), must be forwarded to the Governor, within fifteen days.

18. When any convict renders any great and special services to the State, in the prevention or quelling of insurrections, the saving of life or of the saving or protection of property, a full report of the facts and circumstances, together with the names of the persons cognizant thereof, must be forwarded to the Governor, without delay.

19. All communications addressed by convicts to the Governor, must be forwarded to him, without delay, and in the case of a first communication asking for clemency, a report must accompany it in conformity to Rule 12. The provisions of this rule must be made known to all convicts upon their receipt in prison.

20. In the purchase of new commitment or commutation sheets, the standard size 19 x 19 inches must be maintained, and the arrangement of matter now in use observed.

21. It is requested that all commitment and commutation sheets be folded, instead of rolled, in their transmission to the Executive Chamber.

22. It is suggested that in the transmission of all communications to the Executive Chamber, the address on the envelopes or wrappers be printed.

23. All communications to the Governor must be signed by the first officer or his deputy or principal keeper, except those of the physician.

24. The officers of any of the institutions herein named are prohibited from circulating petitions among themselves or others for the granting of clemency to any convict.

15. A list of all convicts in relation to whom special reports have been requested by the Governor, must be kept in the offices of the warden or superintendent, the deputy or principal keeper, the clerk, the physician and chaplain (where the latter has charge of the correspondence of convicts), in order that future information may be immediately reported as herein provided. Each of the above named offices must contain a copy of these rules.

26. All official communications should be addressed to "The Governor of the State of New York."

Approved *September 1, 1885.*

DAVID B. HILL,  
*Governor.*

ISAAC V. BAKER, JR.,  
*Superintendent of State Prisons.*

DECISION IN THE EXTRADITION CASE OF  
THOMAS MITCHELL.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,

ALBANY, December 7, 1885. }

*In the Matter of the Extradition of Thomas Mitchell. Decision  
by the Governor.*

The Governor of the State of New Jersey has issued his requisition, directed to the Governor of this State, requesting the arrest of Thomas Mitchell, as a fugitive from justice from New Jersey, and his delivery to an agent of that State named in the requisition. Mitchell has been temporarily arrested in New York city, but is being detained in this State awaiting the decision of this application, and his counsel have applied and been permitted to be heard in opposition to his surrender, and the authorities of New Jersey are also represented by counsel who have been heard in favor thereof.

The right of a State to demand, and the obligation of a State upon which the demand is made to surrender a citizen rests exclusively upon the Federal Constitution and the act of Congress of 1793. The Constitution declares that "a person charged in any State with treason, felony or other crime, who shall flee from justice and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime." The act of Congress passed in 1793 to carry this constitutional provision into effect and to provide a mode of procedure under it is as follows :

“SECTION 1. Whenever the executive authority of any State or Territory demands any person, *as a fugitive from justice*, of the executive authority of any State or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the Governor or chief magistrate of the State or Territory, *from whence the prisoner so charged has fled*, it shall be the duty of the executive authority of the State or Territory to which such person has fled to cause him or her to be arrested, and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear.”

No copy of an indictment accompanies the requisition in this case, and none seems to have been found, but there is an affidavit made by a police officer taken before a justice of Jersey City, charging Mitchell with having committed the offense of manslaughter at Jersey City on November twenty-fifth last. There is also annexed to such requisition another affidavit made by a policeman, stating that he knows Mitchell, and that Mitchell “has fled from the State of New Jersey, and is now in the city of New York.” Upon the hearing before me, both the prosecution and the defense introduced further affidavits bearing upon the questions involved.

It seems that the charge of manslaughter arises from the alleged ownership by Mitchell of a building situate in Jersey City, which building was sometime since injured by fire and only a portion of its walls were left standing, and on November twenty-fifth such walls fell and thereby killed four persons, and it is charged that such accident was occasioned by the unsafe condition in which the walls had been permitted to

remain by the owner, who, by reason thereof, was guilty of criminal negligence constituting manslaughter.

The ownership of the premises is disputed, and if I were permitted to determine that question in this proceeding, I should find as a question of fact that Mitchell was not the owner thereof.

It further appears that Mitchell is and has been for many years a resident of the city of New York; that he was not in the State of New Jersey at the time of the accident and had not been there for some weeks prior thereto; that he was in the city of New York at the date of that occurrence, attending to his usual business, and did not know of it until he afterwards read the account of it in the newspapers; and he makes an affidavit explicitly denying that he has fled from the State of New Jersey, or that he is in any sense a fugitive from justice.

The question is presented whether, under these circumstances, a proper case is made out requiring his surrender to the authorities of New Jersey.

It is settled that all inquiry into his guilt or innocence of the crime charged is wholly irrelevant in this proceeding. That question is to be investigated and determined by the courts of the State where the alleged crime was committed. (People *ex rel.* Lawrence v. Brady 56 N. Y. R., 182-187.) For the purposes of this proceeding it is sufficient that he is duly charged in another State with the commission of a crime against the laws of that State.

There is, however, an important question involved in this case, which can properly be determined in this proceeding. The Supreme Court of the United States has held, that upon the Executive of the State in which the accused is found rests the responsibility of determining whether he

is a fugitive from the justice of the demanding State. (*Ex parte Reggel*, 114 U. S. Reports, 643.) While there are some authorities in this State and elsewhere which may be claimed to hold a contrary doctrine (*People ex rel. Draper v. Pinkerton*, 17 Hun, 199; 77 N. Y. R., 245), the decision of the highest court in the country upon a question of this character may safely be followed.

A bare inspection of the act of Congress shows that it does not require the surrender of an accused party, unless it be made to appear that he is *in fact* a fugitive from justice. The determination of that question must necessarily rest with the Executive of the State wherein the accused is arrested.

It has been held that the fact that a party has been indicted for an offense which, in its own nature, implies the actual presence of the offender within the jurisdiction of the demanding State, is sufficient *prima facie* evidence of his having fled from justice when found in the other State. (*Leary's Case*, 6 Abbott's N. C., 44-66.) But this rule does not apply to offenses which, from their own nature, do not imply the actual presence of the offender within the demanding State. The present case is one of the latter class. The offense here charged may be complete under the laws of New Jersey, although the accused may never have been within that State. The theory under which the prosecution must proceed is, that the accused was *constructively* present. But it is held that the provisions of the United States Constitution and the act of Congress for extradition are confined to those who are actually and not merely constructively present in the demanding State, when they commit the acts charged against them. (*Wilcox v. Nolze*, 34 Ohio State R., 520.)

The actual presence of the accused party in the demanding State, at the time of the commission of the alleged offense, is a jurisdictional fact. It must be proved, like any other fact. It may be rebutted the same as any other fact. If such actual presence cannot be established the accused party cannot be said to be a fugitive from justice. The Supreme Court of Indiana has held that "one who, at, and continuously after, the alleged time of the commission of a crime by him in another State, has been within this State, is not a 'fugitive from justice.'" (Hartman v. Aveline, 63 Ind. R., 345.)

In Hurd on *Habeas Corpus* (2d ed., page 612), it is said: "There must be an actual fleeing from justice, and of this the Governor of the State of whom the demand is made, as well as of the State making it, should be satisfied. This is commonly shown by affidavit."

The Supreme Court of Iowa has held that "a citizen and resident of Iowa who is charged with having been constructively guilty of an offense in another State upon which a requisition is based, but never, in fact, has fled therefrom, is not a fugitive from justice within the meaning of the Constitution. (Jones and Atkinson v. Leonard, 50 Iowa R., 106.)

In the present case it is not pretended that Mitchell was present in New Jersey at the time the alleged offense was committed. It is conceded that on that day he was in our own State, of which he was and is a resident. It is not claimed that there has been any *actual* fleeing from New Jersey. There has been neither flight nor concealment shown. All the elements necessary to constitute the accused a "fugitive from justice," within the meaning of the authorities, seem to be lacking. The affidavit of the police-

man which accompanies the requisition, asserting in general terms, and without explanation, that Mitchell "has fled from the State of New Jersey and is now in the city of New York," is entitled to no weight whatever upon this question, in view of the other conceded facts of the case to which reference has been made. It is evident that he only meant to swear to a conclusion of law, viz., to a constructive flight, based upon the fact of Mitchell's being charged with crime in one State and of his being found in another. He could not have known of any *actual* flight, because there was none. Mitchell remained at his own home in this State, both before, at, and since the date of the alleged commission of the crime. "It is difficult to see how one can flee who stands still." (1 Iowa R., 108.)

Bouvier defines a fugitive from justice to be "one who, having committed a crime in one jurisdiction, goes into another, in order to evade the law and avoid punishment." (1 Bouvier's Law Dictionary, 551.)

The prosecution in this case is compelled to take the position that the accused was constructively in New Jersey at the time the crime is alleged to have been committed, and that he has constructively fled therefrom. But the Constitution of the United States does not require New York to surrender, on the demand of a sister State, as a fugitive from justice, one who only constructively fled from the latter.

It will be claimed that there are many crimes which can be committed by an owner of property against the laws of a sister State arising out of the ownership of property therein, although the owner may be a resident of this State and may never have departed therefrom, and if the position here contended for is correct, it must follow that in all

such cases no extradition whatever can be had. It is a sufficient answer to such argument that those instances are comparatively few in number, and that they have not been provided for either in the Constitution or the laws of Congress.

If there is no authority for extradition in certain cases, it ought not to be granted, no matter what the consequences may be. "The Governor of a State is not to become an official kidnapper, in order that the guilty may be punished." (Spear on the Law of Extradition, 2d ed., p. 400.)

In the late edition of the excellent work last above cited, issued in 1884, this whole subject is ably reviewed, and the following conclusion is arrived at: "The truth is that the Constitution contains no provision for the extradition of a person who is not present in the State where he is assumed to have committed the crime, and who has not actually fled from the justice of that State, and who is not, as a fugitive, found in another State, and who does not choose to go to that State." (See p. 397.)

Governor Robinson passed upon substantially this same question in the year 1877, and refused to surrender one Henry W. Baldwin upon a requisition from Governor Bedle of New Jersey. It appeared that Baldwin was a resident of this State, and was charged, with other directors of a New Jersey insurance company, with "conspiracy to defraud," alleged to have been committed in New Jersey on a certain date, but at which date he was in fact in the State of New York, although he had recently prior thereto visited New Jersey on business somewhat connected with matters out of which the "conspiracy" was said to have arisen; but Governor Robinson held that even under such circumstances the crime, if any, was committed in this State where Baldwin

resided, and that he was not a fugitive from justice. (See Public Papers of Lucius Robinson, pages 170 to 177.)

These precedents, in my opinion, are conclusive of the question here involved.

Even if there was doubt about it, I should still be disposed to refuse the application, because the power of extradition vested in the Executive is a high prerogative which should be cautiously and judiciously exercised, and only in clear cases should it be invoked.

A surrender by authority of the Executive sends a resident of his own State to another State, away from his bail, friends and home,—for trial.

The Executive owes a duty to the citizens of his own State to protect them in their just rights and to guard them from improper arrests at the instance of officers from other States acting under doubtful authority, especially where such arrests are for the purpose of compelling them to answer for crimes which, if committed at all, have only been constructively committed against the laws of such State.

I shall not lend my official sanction to a doctrine which would permit a citizen of New York, who had never been out of the State in his life, to be seized and carried away to Oregon or any other State, to be tried on an indictment found against him in such State.

It follows that I must respectfully decline to comply with the requisition in this case.

DAVID B. HILL.

IN THE MATTER OF PHILIP NIVER — LETTER  
TO COUNSEL.

STATE OF NEW YORK.

EXECUTIVE CHAMBER,  
ALBANY, *December 29, 1885.* }*In the Matter of the charges against Philip Niver, Superintendent  
of the Poor of the county of Columbia.*

TO MESSRS. ANDREWS and EDWARDS, counsel for PHILIP NIVER,  
and to EUGENE BURLINGAME, counsel for committee:

GENTLEMEN.—The commissioner's report in the above matter was not filed with me until the afternoon of December twenty-second. I find that my official engagements are such that it will be utterly impossible for me to pass upon this report before January first. I had hoped to be able to do so, but am overwhelmed with business matters of various kinds which must be disposed of before that date, and which prevent my giving this case any attention. Each party would be entitled to be heard before the decision could be made and I have no time to hear the arguments or to examine the testimony.

Desiring that the counsel upon each side should understand the situation, I address you this note.

I remain, very respectfully,

DAVID B. HILL.

## ADDRESS OF THE GOVERNOR

ON THE

OCCASION OF THE OPENING OF THE STATE PARK AT  
NIAGARA, JULY 15, 1885.

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FELLOW CITIZENS.—It has ever been the custom of our people to celebrate with appropriate ceremonies those great events which have made the history of our State illustrious. A few reminiscences of this character may not be uninteresting upon this occasion.

I am reminded that we stand upon historic ground to-day. Early in August, 1810, there was an assemblage at Niagara Falls, which, though few in numbers, was in some respects quite as important as the one now assembled. Here, after a long and tedious journey from New York city, came Dewitt Clinton, Gouverneur Morris, Stephen Van Rensselaer, Peter B. Proctor, Simeon Dewitt, William North and Thomas Eddy, the first commissioners ever appointed in relation to canals in this State—to decide upon the most feasible way of carrying out the long projected scheme of uniting the waters of Lake Erie with those of the Hudson. Among the plans proposed was the lockage of the Falls of Niagara and the improvement of the navigation of the Oswego and Mohawk rivers. It was this plan that brought these commissioners to Niagara Falls. This celebrated journey to the then far west, practically resulted in the adoption of the present route of the Erie canal, though seven years or more elapsed before that great work was begun.

The ground was formally broken at Rome, N. Y., July 4, 1818, by DeWitt Clinton, who removed the first shovelful of earth in the presence of a mighty throng of people, most of whom regarded all the ceremonies as a stupendous farce. The idea of making an inland river or water-course that would be navigable between the Hudson and Lake Erie was considered an utter impossibility, and the undertaking was derided as "Clinton's Ditch."

On October 25, 1825, the celebration of this,—then the greatest event of modern times,—took place in the city of New York. It was the grandest demonstration that had ever taken place in the State, if not in the Nation. The completion of the canal was announced to the citizens of the State by the roar of cannon planted in a continued line along the banks of the canal and of the Hudson, at intervals of about eight miles, extending from Buffalo to Sandy Hook, a distance of about five hundred and forty-four miles. The cannon were fired in succession, commencing at Buffalo at the moment of the entrance of the first boat into the canal; and the intelligence thus communicated, reached the city of New York at precisely twenty minutes past eleven. It took one hour and twenty minutes after the first cannon was fired at Buffalo, before the report was communicated through the line of cannon to New York. The rapidity with which the news was thus transmitted over the great distance, seemed almost fabulous.

Nearly sixty years ago, Dewitt Clinton, with appropriate ceremony, thus united the waters of Lake Erie and the Atlantic by pouring those of the former into the latter. The State had opened a communication between the two important bodies of water, which, for many years has been free to the commerce of the nation, and to-day with equal

munificence, the State has opened the great falls freely to the world, and proclaimed it in the presence of this vast multitude, amid the booming of cannon, the strains of sweet music, the marching of our citizen soldiery, the waving of flags and the enthusiastic acclamation of the people.

The construction of that other great channel of communication known as the Erie Railway, began in 1833, and it was formally opened May 14, 1851, by a grand excursion from Piermont, then the eastern terminus of the road to Dunkirk.

Among the excursionists were President Fillmore and four members of his Cabinet ; Daniel Webster, Secretary of State ; Hon. Wm. A. Graham, Secretary of the Navy ; Hon. N. K. Hall, Postmaster General, of Buffalo ; Mr. Crittenden, Attorney General, Hon. William H. Seward and Daniel S. Dickinson.

On the next day, the fifteenth, a grand celebration in honor of the event took place at Dunkirk, in the presence of 15,000 people gathered from Ohio, Pennsylvania and New York. Among the orators of the day were Mr. Fillmore, Mr. Webster, Mr. Seward, Mr. Dickinson and Mr. Crittenden.

In 1871 the State laid the corner-stone of its magnificent Capitol at Albany, destined to be one of the finest structures upon the continent, in which all citizens may take a just pride. Governor Hoffman delivered an address upon that occasion in the presence of a vast concourse of people, which was replete with eloquence and learning.

In 1883 the first wire was suspended across the East river, in the harbor of New York, and there was witnessed the greatest triumph ever achieved by engineering skill and science, in the successful completion of the world-renowned New York and Brooklyn bridge. It was opened with

impressive festivities and formalities in the presence of the honored chief magistrate of the country and his cabinet, as well as our own chief executive and a large concourse of the distinguished men of the times.

These demonstrations of former years to which I have alluded were in recognition of the wonderful achievements secured by the enterprise, ability, science and skill of our people. These ceremonies to-day, however, characterize a triumph of a different character. We rejoice—not at the victories of science or the sublime efforts of mechanical genius—but over that exhibition of elevated sentiment, unselfish generosity, creditable public spirit and genuine patriotism which inaugurated and carried to final success this philanthropic project for the preservation to the world for its free use forever, of the majestic scenery of the falls of Niagara—nature's grandest gift to man. This festivity is a tribute to the beauties of nature—a testimonial to the wondrous fascination of lovely landscape—a token of our grateful appreciation of the magnificent grandeur of the rushing waters of yonder deep.

The State accepts this reservation. In its sovereign capacity it assumes formal possession in behalf of and in trust for the people whom it represents and whose property it now becomes.

Originally belonging to the State, it now fittingly returns to its primary, natural and appropriate ownership.

The State, by legislative act, properly places the management and custody of this public trust, in the hands of its constituted agents—the honored commissioners whose most valuable, gratuitous and unremitting services have contributed so much to make this great undertaking the magnificent success it is to-day.

All honor to their perseverance, their foresight, their generosity and their patriotism! Never was there a cause more worthy of generous human effort. I can certify that from the inception of this great project down to the present hour, involving, as it necessarily has, vast interests, many temptations and the expenditure of a million and a half of dollars, there has not been the slightest suspicion of wrong-doing or the least whisper of scandal affecting the proceedings of the commissioners. All has been done honestly, openly, fairly and conscientiously to their everlasting fame and credit, and to the satisfaction of the people. There will be no complaint on the part of any citizen at this outlay of the public money. For such and kindred beneficent purposes, New York cannot expend too much. We are abundantly compensated and our State pride is gratified by whatever contributes to the glory, the grandeur and the adornment of our commonwealth. We do not forget that there is but one Niagara Falls in the whole world. Nature has given no other State in our Union such a magnificent boon.

As Niagara divides its waters between the Canadas and New York alone, so will New York and the Canadas equally divide together the honors of this great enterprise, when it shall be fully perfected on the other shore as originally contemplated.

New York has its unrivaled Central park, Brooklyn its splendid Prospect park, the Capital city its Washington park, Buffalo its own superb park, the name of which I do not recall—and all over our commonwealth and in almost every city, the works of nature are being nobly utilized for the enjoyment and benefit of the people,

while the State at large, from this time forth, has its own Niagara park

This project for the preservation of the beauties of the greatest wonder of nature is indeed a noble one. Its conception is worthy of the advanced thought, grand liberality, and the true spirit of the nineteenth century.

STATEMENT  
OF  
PARDONS AND COMMUTATIONS OF SENTENCE  
GRANTED BY  
DAVID B. HILL,  
GOVERNOR,  
DURING THE YEAR 1885.



## PARDONS.

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May 28, 1885. Etta Hunt. Sentenced May 8, 1885 ; county, Cayuga ; crime, forgery, second degree ; term, five years ; prison, Onondaga County Penitentiary.

It appears that this woman, who is the mother of six infant children, depending upon her for support, was in destitute circumstances, and applied to the poormaster for relief. She received an order for the trifling sum of one dollar and fifty cents, and this paper she altered so that it called for three dollars and fifty cents.

The Penal Code makes an alteration of any instrument or writing, by which a pecuniary demand is increased, forgery in the second degree, no matter whether the amount be one dollar or a million dollars. The minimum punishment for the offense is arbitrarily fixed at not less than five years' imprisonment. Accordingly this woman was indicted for forgery in the second degree, and, being convicted, was sentenced to five years' imprisonment in the Onondaga County Penitentiary—the least penalty which the judge could inflict. I am informed by benevolent people who have interested themselves in her case, and by the physicians of the penitentiary, that she will give birth to a child in a few days. Her six boys and girls are in the city of Auburn, dependent on charity.

All the circumstances of the case, her poverty, her large family, her peculiar condition, the small sum of money appropriated and the severity of the punishment, seem to me

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to make it a case where Executive clemency should be exercised. It is to be regretted that a plea of guilty of forgery in the third degree was not accepted, the punishment for that offense being imprisonment which could be for any period the judge might think proper, not exceeding, however, five years. A short imprisonment—perhaps a few days in jail—would have satisfied the law. Under all the surroundings the punishment inflicted seems excessive. The judge who sentenced the prisoner, the local and prison authorities, the citizens generally in the community where the crime was committed, all urged that a pardon be granted. While fully recognizing the gravity of the crime of forgery, and the long-settled policy of the Executives of this State in refusing to extend clemency to those convicted of this offense, yet in this case I am decidedly of the opinion that the punishment is too severe, and I believe that mercy may properly be shown without detriment to any public interest.

The exceptional circumstances of this case have led me to waive the rule that all applicants for pardon must wait until thirty days after the session of the Legislature.

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June 22, 1885. Willis L. Bouton. Sentenced November 18, 1884; county, New York; crime, violating the election law; term, one year; prison, Sing Sing.

The district attorney who prosecuted the indictment strongly recommends this pardon, and the judge who passed sentence upon the offender fully concurs in this recommendation. The case was first brought to my attention by the physician of the Bouton family, who came personally to see me and urge Executive clemency.

Although the crime of which the prisoner was convicted is of a most serious character, nevertheless, after carefully considering all the surrounding circumstances, I am satisfied a pardon should be granted.

The facts of the case, briefly stated, are as follows :

Willis L. Bouton, who is a member of a most respectable family in Norwalk, Connecticut, and was brought up at that place, came to New York city about the time of the last general election on a visit to some relatives, and with a view of obtaining employment. He was but nineteen years of age. Falling into bad company, he was induced to drink, and on the day of election, for the first time in his life, so far as can be ascertained, became intoxicated. In that condition he was made the tool of his associates, older and criminal persons, and by them induced to vote in the name of another, and after that to offer his vote, thus committing the offense for which he was imprisoned.

He was not a citizen of the State of New York ; he was not yet of age ; he was not particularly interested in the result of the election, but he was under the influence of liquor. It is easy, therefore, to believe that he did not realize what he was doing. In fact, when called upon to plead to the indictment found against him, he at once admitted his guilt, and himself stated that he was so drunk on election day as not to know what he was about. The Honorable Frederick Smyth, recorder, before whom the case was tried, in consideration of Bouton's good character, shown by testimonials of citizens of undoubted respectability ; of the fact that he had never been known to have been arrested before, and of his youth, imposed the lowest penalty allowed by law—one year's imprison-

ment in State prison. The report I have obtained from the prison shows that his conduct while there has been good, and that he has not received punishment of any kind, and with the commutation allowed by law for good conduct, has less than three months of his sentence to serve.

But all the mitigating circumstances, I feel, would not justify me in ordering his release. What has chiefly led me to that decision is the statement made to me by the family physician in person. From him I learn that the mother of the prisoner, whom this physician has attended for several years past, is in the last stages of a most painful cancerous disease, and cannot, in the doctor's opinion, live longer than two weeks. For several months past she has been constantly asking for her son, and entreating that she may see him before her death. She is greatly troubled about his misfortune, and can think of nothing else, and the doctor tells me that he knows the few days of life remaining for her would be rendered comparatively happy by the presence of this her only son. This is corroborated in writing by numerous and highly esteemed citizens of Norwalk, who, to the mother's wishes, add their own.

In the belief that the object of punishment has been attained—for the time that he has already served is to a young man of his character a much greater punishment than a longer term would be to a hardened criminal—and that the administration of justice will not suffer by his release, and more than all, in the belief that this boy's life for the future, by such a course, will be made better, I have granted the pardon sought.

July 9, 1885. Glenn W. Abbott. Sentenced May 5, 1882; county, Herkimer; crime, forgery; term, five years; prison, Auburn.

The papers filed on the application for this convict's pardon disclose that his mother died when he was quite young, and he had for some considerable time previous to the commission of the offense for which he is now imprisoned been rather wild and reckless, and not disposed to submit to parental restraint, although not having a naturally vicious character. It appears that at the time he committed the crime he was quite young, only eighteen years of age. Not being able to procure what money he wished, and knowing that his father had cash on deposit in a bank, he, perhaps not realizing the consequence of his act, forged his father's name to a check. On the convict's arrest, the father, believing it to be for the best interests of the son, did not seek to shield him from prosecution, thinking the punishment would work a salutary influence. The court imposed the lowest penalty. The convict having now served the greater part of his sentence—his conduct in prison having been most exemplary—he having shown sincere contrition for his act, and given evidence of reformation, his father and many respectable citizens in the locality, including ex-Speaker Sheard, now join in the application for the pardon. In this they are supported by the district attorney who prosecuted the convict, and the judge who imposed the sentence. I am, therefore, satisfied that the ends of justice will not suffer, but rather be subserved by a pardon, and that it is best that this young man be given an opportunity to become a useful citizen. It is believed that there is more likelihood of his becoming such if he

be released now, than if his punishment should be prolonged. The certainty of punishment is a greater safeguard to society than the severity of it.

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July 21, 1885. Richard Fagan. Sentenced November 23, 1883; county, Albány; crime, grand larceny; term, three years; prison, Albany County Penitentiary.

It appears that the offense grew out of a drunken frolic, in which the convict and his companion (from whom it was alleged the convict stole the money) were engaged. Both were much intoxicated, and it is very doubtful whether there was any real criminal intent in the taking, or in the finding and appropriation of the money by the convict. There was, probably, a technical larceny established, because intoxication is no excuse for any crime. It is, however, a circumstance which may properly be considered in mitigation of punishment.

Since his conviction, some new facts have come to light, supported by affidavits, which tend to show that he may possibly be innocent.

I am not, however, fully convinced that he has been entirely free from all wrong-doing in the matter. It, nevertheless, presents a case in which Executive clemency may very properly be exercised, especially as the judge who imposed the sentence concurs with the convict's friends in asking for his pardon.

This being a case where the excessive use of intoxicating liquors was the occasion of this convict getting into difficulty, I am disposed to be lenient toward him, provided he manifests a disposition to aid himself, by reforming his habits and becoming a sober and industrious man.

Drunkenness has become so prolific a source or concomitant of crime, that society has a right to insist, where clemency is, for any good reason, shown persons who have committed offenses while in that condition, that they should for at least a reasonable time maintain a condition of sobriety.

He having already been imprisoned over a year and a half, I have concluded to grant this convict the pardon applied for upon the condition that he shall hereafter, for a period of five years from the date hereof, entirely abstain from drinking intoxicating liquors, and in case such condition is violated, his sentence shall be restored and revived in full force and effect.

If he desires to accept a pardon under such circumstances he may do so; otherwise, he must serve out his full term.

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September 4, 1885. Byron B. Fairbanks. Sentenced March 21, 1884; county, Chemung; crime, assault, first degree; term, two years; prison, Auburn.

The term of this prisoner (on account of his good behavior) expires in less than three months. His sister is dangerously ill and cannot long survive, and her illness is aggravated by anxiety about her brother. While the illness of relatives or other distressing or unfortunate circumstances do not of themselves furnish sufficient grounds for the pardon of a convict in the middle of his term, yet they may properly be considered where he has but a very short time to serve.

Nearly a year ago Governor Cleveland denied an application for pardon in this case. Until recently there has been nothing occurred to warrant any other decision, but there

have now been presented to me some new facts and evidence under oath tending to show that the prisoner did not personally fire the pistol that inflicted the injury. The prisoner has himself made an affidavit charging the offense upon another, and some other evidence has been presented to me which tends to corroborate him. While it may be doubtful whether this new evidence is entirely worthy of belief, it is better to give the prisoner the benefit of the doubt. He having nearly served out his full term—his conduct in prison having been good—his sister's health being in danger by his further confinement, and it appearing that another or others were as much, if not more, to blame for the shooting than the prisoner (who is naturally an inoffensive person), under all these circumstances I think that mercy may properly be extended to the prisoner at this time. He has probably been sufficiently punished to deter him, if guilty, from attempting any such offense again, and although the crime was a serious one, yet the judge and the jury before whom the trial took place, and many citizens having united in a petition for his pardon, I have determined, under all the circumstances, to extend clemency to him, and to restore him to his sister and friends.

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September 11, 1885. Louis Beaudry. Sentenced June 22, 1882; county, Onondaga; crime, grand larceny; term, five years; prison, Auburn.

The term of this convict has nearly expired, as shortened by the allowance which would be made for his good conduct in prison. It is represented that this was his first offense and that his previous character and antecedents had been good; that the offense was not an aggravated

one of its class, nor committed under such circumstances as would indicate a criminal or vicious mind ; that the punishment imposed was excessive, and that the exercise of clemency would strongly tend to aid him in again entering upon a life of usefulness. In addition to these representations by people of character and standing in the community where the convict had lived, the application is unqualifiedly recommended by the judge who imposed the sentence and the district attorney who prosecuted the prisoner. In view of these representations and recommendations, I have determined that a pardon, at this time, may be the means of restoring this young man to a place of respectability in society.

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September 12, 1885. William Hurley. Sentenced January 6, 1881 ; county, Broome ; crime, larceny ; term — ; prison, State Reformatory — transferred to Auburn.

The offense of this convict was not serious, nor committed under such circumstances as to merit severe punishment. At the time he was only eighteen years of age, and, from all that can be learned, his act seems to have resulted more from a spirit of mischief than a settled impulse to commit crime, inasmuch as his previous character is certified to have been good. He has now served the greater portion of his sentence, and would have been discharged in the course of a few months. All the possible effects of prison discipline seem to have been accomplished, and it is urged that he may be discharged at this time, in order that he may avail himself of opportunities of employment before the cold season sets in. The above representations are made by Senator Dennis

McCarthy, Judge Irving Vann, of the Supreme Court, the mayor of Syracuse, and many others who have taken the pains to familiarize themselves with the case. The district attorney who prosecuted the convict also recommends his pardon. It is with the belief that this youth has been adequately punished, that he will not again commit crime and will become an industrious and reputable citizen, that I have decided to temper justice with mercy and order his release.

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September 14, 1885. James Gallagher. Sentenced December 11, 1884; county, Rensselaer; crime, grand larceny; term, two years, four months; prison, Albany County Penitentiary.

It appears that the convict aided the real perpetrator in the commission of the crime, and while not actively engaged in the offense, received twice as much punishment as the one who stole the property, and that the latter has been enjoying his liberty for some time. These facts appear somewhat strange, but they are officially certified by the judge who imposed the sentence, who "earnestly recommends the pardon," and who further says: "I sentenced him to the very lowest term possible." The district attorney who prosecuted the convict certifies that the latter's previous character was good, and that he faithfully cared for his wife and two small children. He also states that the ends of justice will be promoted by a pardon. The above facts are also certified by many county and town officials and others cognizant of the circumstances of the case. From the foregoing I am clearly of the opinion that, as a matter of exact justice, I ought to order the release of the convict, and have so determined.

September 16, 1885. George A. Van Horn, *alias* George Reed. Sentenced September 22, 1876; county, New York; crime, robbery, first degree; term, fifteen years; prison, Sing Sing — transferred to Auburn.

This convict has already served nearly the whole of his term of imprisonment, less the reduction to which he is entitled by law for his good conduct in prison. The sentence imposed was an unusually severe one, considering that this was the first offense of any kind of which he was ever charged. As is often the case, this convict was evidently overcome by sudden temptation at a time when he was under the influence of liquor. Feeling keenly the disgrace of his situation, he kept the fact of his arrest from his friends by giving an assumed name, and was actually in prison before his whereabouts were made known to them. It is clearly apparent that while this convict had been given somewhat to dissipation, yet his character in other respects had been good; that his antecedents and surroundings had been entirely respectable, and that there was, and is, nothing to show that he belonged to the criminal class. During all the years that he has been in prison his conduct has been without blemish, and he has occupied his spare time in improving his education. He has shown a thorough repentance of his crime and a disposition, if released, to become a good citizen. In this he will be aided by having acquired in prison a good trade, which will enable him to procure a livelihood at honest industry. His friends have shown, in all possible ways, their belief in his future integrity, by offering to extend to him all the help in their power in the event of his discharge. I am, therefore, satisfied that the pardon of this convict, at this time, may be the

means of restoring to society a regenerated man, and of saving him from becoming a member of the permanent criminal class.

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September 19, 1885. John Pemberthy. Sentenced April 7, 1884; county, New York; crime, grand larceny, second degree; term, two years; prison, New York Penitentiary.

This convict has less than three months of his term of imprisonment to serve, as shortened by the reduction he has earned for his good conduct in prison. An examination of the facts and circumstances in this case shows the convict's act to have been most unaccountable. It appears that his character had been of the best; that he had faithfully served his country as a loyal soldier in the war of the rebellion; that he had been in the employ of one firm as a trusted servant for over twenty years; that he was addicted to no vices, and that he faithfully cared for his family. There was nothing, apparently, in his previous character which would lead up to the commission of a felony. It simply appears to be a case of sudden and overwhelming temptation, resulting in a sad and terrible downfall. It is now represented that his health is in a most precarious condition; that he is thoroughly repentant of his crime, and has evinced, in the strongest manner, his determination to atone for his act by hereafter becoming a good citizen. There can be no question but that the punishment already inflicted has been to him a most fearful atonement, and that its effects will be lasting. The certainty rather than the severity of the punishment is shown to be most effective in the repression of crime, and particularly in cases of

this class. I have, therefore, determined that justice can hardly suffer if this convict be released, and permitted to enter on a new life.

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September 19, 1885. Edward Fleuett. Sentenced December 17, 1883; county, Monroe; crime, perjury; term, two years; prison, Monroe County Penitentiary.

The alleged perjury was committed by the prisoner as a witness on the trial of a civil action in which he was plaintiff. The evidence against him on the trial of the indictment was very conflicting. The case was by no means clear, and his guilt does not appear to have been satisfactorily established. The evidence may have been technically sufficient to sustain the verdict in a court of law, and to prevent its being set aside by the trial court, but it was far from convincing or conclusive. The principal witness against the prisoner was thoroughly impeached. The defendant was poor and without adequate means to prosecute an appeal. Judge John S. Morgan, before whom he was tried, writes that he "was surprised at the verdict of the jury." He can only account for it, he says, on "general principles." His associate justices certify that they are not satisfied that the prisoner was guilty, and desire him pardoned. The attorney for the complainant, who tried the civil action against the prisoner, concurs in surprise at the verdict, and unites in an application for his pardon. Eight of the jurymen, all that were accessible, also ask for the pardon. Executive clemency is also requested by Mayor Parsons, of Rochester, and a large number of prominent and respectable citizens of that city. The prisoner has been in prison since December twenty-ninth last, in the Monroe County Penitentiary, where his conduct has

been excellect, but he is now broken down in health. Under all the circumstances, this seems to be a proper case for the exercise of Executive clemency.

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September 21, 1885. Nelson Bryan, *alias* Brown. Sentenced May 13, 1885 ; county, Kings ; crime, receiving stolen goods ; term, nine months ; prison, Kings County Penitentiary.

This convict is a friendless, ignorant, colored man—an ex-slave. It appears from an examination of the papers, the statements therein being vouched for by gentlemen of the highest respectability, that a colored woman found a pocketbook in a street car, containing among other things a couple of rings. She gave the one of least value to the convict, with whom she had been acquainted from the time they were slaves in the south, and he received it without having an idea that he was committing a crime. He was indicted, and the woman, who was the principal in the transaction, was used as a witness against him on his trial, after she had been tried and discharged by reason of the failure of the jury to agree. Citizens of this and his native State certify to his entire respectability previous to this conviction. He now having served over half his term, it is urged that he may be discharged, it appearing that his former employers are ready and willing to give him work immediately on his release. I have, therefore, determined to discharge him, inasmuch as I believe he has been sufficiently punished for an offense of which he may have been technically, though not morally, guilty.

September 21, 1885. Timothy Driscoll. Sentenced October 4, 1884; county, Albany; crime, grand larceny, second degree; term, three years; prison, Clinton.

Convict and two others were engaged in the commission of the offense. One of them turned State's evidence, was permitted to plead guilty to petit larceny, and received a sentence of only a few months' imprisonment, and the last of the three fled from the State and has not yet been brought to justice. From an examination of the papers in the case I am satisfied that, while there are strong grounds for the belief that the companions of the convict were old offenders, he had borne a previous good character, and had never before been charged with crime. His somewhat dissipated habits and the fact of his having been temporarily idle probably led to his acquaintance with his companions in guilt and his subsequent fall. The judge before whom the conviction was had strongly recommends a pardon. He says one of the convict's associates, who turned State's evidence against him, was a "professional thief," and "I have some doubt as to his guilt; and, anyhow, I think he has received sufficient punishment for his share in the crime." The convict has now actually served nearly a year, and he has a wife and two small children, who were left destitute. Under all these circumstances, I am satisfied that justice will be promoted by his discharge.

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October 10, 1885. James Hardie. Sentenced March 21, 1884; county, New York; crime, manslaughter, first degree; term, five years; prison, Sing Sing.

It appears by the most unmistakable proof, not only by that produced on the trial, but by that laid before me,

given by those who have been acquainted with the convict since his childhood, that his previous character was most excellent, and many people of good standing in the community where he lived certify to his sobriety and habits of industry in the strongest terms. An examination of the official papers on file discloses the fact that the conviction might well have been had for a lesser degree of manslaughter. It is perfectly evident that the convict had no intention of producing death, and fully believed that his acts were such as he would be justified in doing in protecting his own life. That the deceased, and not the convict, was the aggressor, is also conclusively shown. But a human life was taken, and whatever might have been the convict's ideas as to the jeopardy his life was in, the jury evidently thought there was too much doubt in the case to entirely warrant an acquittal. The court, in passing sentence, gave him all the benefit of doubt possible when it sentenced him to the lowest permissible term. Judge Gildersleeve, in his official communication, says: "The evidence indicated, with considerable certainty, that the stabbing was done by the convict under the belief that he was in imminent danger at the hands of deceased. In my opinion he acted in good faith and intended no crime. He proved excellent character, and in my opinion is a fit subject for clemency." The convict has now actually served, allowing for the lawful reduction to which he is entitled for his good conduct, a sentence of one year and ten months. It can hardly be claimed that any necessity exists for imprisonment in this case for purely reformatory purposes, and inasmuch as the convict has served a full equivalent for a conviction in one of the lower degrees of manslaughter,

I do not think it would affect the public interests if he should be discharged and allowed to again become a self-supporting citizen. I have, therefore, determined to pardon him.

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October 17, 1885. John McNalley, *alias* McNarry. Sentenced August 18, 1885; county, Montgomery; crime, vagrancy; term, three months; prison, Albany County Penitentiary.

It appears that this youth had been out of school but a few months, and on leaving it procured employment in which he continued for only a short time. Being very young, and having become possessed with the adventurous spirit, he started out in the world, but without informing his parents of his intention. In his wanderings in search of employment his scant supply of money was soon gone, and with no place of shelter he one night went into an open freight car to sleep. On being found there the next morning his story was not believed, and he was committed to the Penitentiary as a vagrant. These facts are submitted to me by Chief of Police Willard, of Albany, whose attention has recently been called to the case by a police officer who lives at the home of the boy's family. He informs me that he has looked into the circumstances, and from his own knowledge, and that derived from the officer who called his attention to the case, he is prepared to vouch for them. While the circumstances surrounding the offense, and without adequate explanation, were sufficient to make a case of vagrancy and to justify the conviction, yet it is now clearly apparent that in fact the prisoner was not morally guilty of the offense. It is also clearly shown that the parents of the boy are entirely respectable, and able and willing to give him care and

support. I am, therefore, satisfied that the lesson he has received will, in all probability, be sufficient to insure his future behavior, and that the interests of all concerned will be best subserved by his pardon, which is granted this day.

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October 20, 1885. Patrick Tierney, *alias* Fierney. Sentenced May 16, 1884; county, New York; crime, assault, second degree; term, two years and six months; prison, Sing Sing.

The previous good character and industrious habits of this convict are certified to me in the strongest manner by people of the highest respectability in the community where he lived. The sole cause of his misfortune seems to have been an over indulgence in intoxicating beverages, on the occasion of a visit to the city of New York. There is nothing tending to show that he had been in the habit of previously drinking to excess. It nowhere appears that there was any malice in the act for which he was convicted, and it is represented that having been in a disordered state of mind he committed the assault under the belief that he was acting in self-defense. He has now served a term of one year and eight months, allowing for the reduction to which he is entitled by reason of his good conduct in prison—a length of time I believe which has been amply sufficient as an atonement for his crime. He has a good trade and is represented as a skilled workman who can immediately find work at his former employer's. For these reasons, I can see no good object to be gained by his further imprisonment, and I have, therefore, determined to pardon him.

November 9, 1885. Edward McKenney, *alias* McKinney. Sentenced June 16, 1884; county, Montgomery; crime, assault, second degree; term, two years; prison, Clinton.

This young man is the son of respectable parents and his previous reputation as to industry, sobriety and honesty was considered good. His fall, as is to often the case, was the direct result of evil associates and the immoderate use of liquor. It is apparent that he intended no willful malice in the commission of the act, which partook more of the character of recklessness than of a settled impulse to commit crime. The district attorney who prosecuted him says: "I thought the crime was committed thoughtlessly. He was drunk and with bad associates. He frankly confessed and exonerated his companions and I think justice will be served by granting him a pardon." The judge who imposed the sentence concludes his official communication as follows: "I gave him the lowest term. The case is one where clemency can properly be exercised." He has now served a sentence of one year and six months, allowing for the reduction to which he is entitled for his good conduct in prison, being the greater part of his term. I am fully satisfied that the ends of justice have been answered by the imprisonment he has already suffered, and that a pardon at this time will materially aid him in building up a new character. If he shall prove himself not unworthy of the discriminating favor now extended to him he may on some future occasion be restored to his rights of citizenship after his reformation has been fully tested.

December 14, 1885. Thomas Horan. Sentenced February 29, 1884; county, Kings; crime, burglary, third degree; term, three years and six months; prison, Kings County Penitentiary.

The physician of the prison certifies to me that this convict can live but a few days at most, as he is suffering from an incurable disease. It is represented to me that his antecedents are entirely respectable; that it is his first offense, and that in the event of his pardon he will be comfortably cared for during the short time he has to live. While the law does not require or contemplate that persons convicted of crime shall always, in the event of a near approach of death, be released in order simply that they may die out of prison, yet in this case there are circumstances surrounding it which appeal strongly for clemency. I have, therefore, determined, considering all the circumstances and as an act of humanity, to order his discharge.

[The above-named convict died December 15, 1885, an hour and a-quarter before the pardon reached the prison.]

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December 14, 1885. Jennie Elmore. Sentenced February 12, 1885; county, New York; crime, forgery, second degree; term, five years; prison, New York Penitentiary.

The application for the pardon of this woman is made by the judge before whom her conviction was had, and the district attorney who prosecuted her in behalf of the people. In their joint communication to me is given the language of the court in passing sentence, which furnishes ample reasons, I think, for my action, and is as follows: "I am satisfied, by a careful inquiry into your past life,

Jennie Elmore, that it has not been blameless, but, in the matter of the forgery, of which you were properly convicted, I think that you were largely influenced by this man Jones, with whom, the evidence shows, you were foolishly infatuated. He shrewdly pleaded guilty of a petit larceny, and was sentenced to the penitentiary for only six months. You, however, probably not being as well versed in crime, demanded a trial here. Under the conviction I have little discretion as to punishment. The lowest penalty prescribed by the law is imprisonment in the penitentiary for five years. That is the sentence of the court. But, under all the circumstances of the case, I regard the penalty as unduly severe. If you conduct yourself well in prison I will recommend to the Governor a commutation of your term that will shorten it to a length that he may deem a sufficient penalty for your offense." My attention has also been called to this case by a gentleman of the highest respectability, who lives in the neighborhood of her family in the west, who assures me that a good home is awaiting her there, and that he purposes taking her to her friends immediately upon her discharge. She has now served a sentence, allowing for the legal reduction to which she is entitled by reason of her good conduct in prison, of nearly eight months, a term considerably in excess of that which her more guilty companion received. I am, therefore, satisfied that a pardon at this time and under the favorable existing circumstances, may be the means of restoring this unfortunate woman to a position of respectability.

December 14, 1885. Ralph Schmidt. Sentenced June 12, 1884; county, New York; crime, grand larceny, second degree; term, two years; prison, New York Penitentiary.

It is represented to me that the circumstances connected with the commission of the convict's crime were not of an aggravated character; that he is not an old offender, nor was he the companion and associate of the low and vicious; that his offense was rather the result of sudden temptation than of a settled impulse to enter upon a life of crime; that by the death of his mother, which occurred in Germany in the early part of this year, he became the heir to a considerable property which his sister is trying to defraud him of by reason of his enforced absence from the country; that under the law of the province where the property left by the convict's deceased mother is located, the convict, in order to assert his legal rights, must appear in person before the proper tribunal within one year from the date of his mother's death, and that if the convict is compelled to serve out his full term, he will be wholly precluded from receiving any benefit from his mother's estate. These representations have been fully investigated by the court in which the conviction was had, and both the judge and the district attorney certify to their correctness and recommend that the convict's application be granted. It is evident from the lenient sentence imposed, one-half of the maximum penalty, that the court did not consider the convict a hardened criminal. By a pardon, at this time, he will be entirely removed from the peculiar temptations which beset a recently discharged convict, as under the circumstances he would, for the protection of his rights, be compelled to leave the country at once. He has now served, with the

exception of two months, the whole of his sentence, less the reduction to which he is entitled by reason of his good conduct in prison, and I am satisfied that the best interests of the State will be served by the cutting short of the convict's term, rather than by exacting the full penalty imposed, with the not improbable result of placing him among the permanent criminal class.

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December 15, 1885. Mary Wakefield. Sentenced October 2, 1885; county, Madison; crime, petit larceny; term, six months; prison, Onondaga County Penitentiary.

The superintendent and the physician of the Onondaga county penitentiary certify to me that this woman is *enceinte*; that the facilities of the institution are wholly inadequate for her proper care and treatment, and they ask, in the interests of humanity, that she be pardoned and discharged, in order that she may have the comforts due to a person in her situation. In this they are joined by Judge Irving G. Vann, of the Supreme Court, and others who have interested themselves in the case. The law has been sufficiently vindicated by the two months' imprisonment she has already suffered, and to compel her to serve out her full sentence, under the circumstances, could only result in the infliction of suffering and hardship not contemplated by the laws of the State. I have, therefore, determined to grant an immediate pardon in this case.

December 19, 1885. John Curtin. Sentenced June, 1881; county, New York; crime, violating an act passed in 1881, entitled "An act to forbid the assumption of the title of port warden by persons not duly appointed;" term, three months; prison, New York Penitentiary; judgment stayed.

Governor Abbett, of New Jersey, has requested the pardon of this man, and an examination of the papers in the case discloses the following facts: John Curtin was and is now a resident of the State of New Jersey. On April 5, 1878, under an act of the Legislature of that State, entitled "An act authorizing the appointment of port wardens in certain cases in this State," he was appointed by Governor McClellan one of the port wardens authorized to be appointed by that act. He then occupied and still occupies a loft at Nos. 98 and 99 West street, New York city, as a sailmaker. At this place he exercised his powers as port warden under his commission from Governor McClellan. On April 8, 1881, the Legislature of New York passed an act entitled "An Act to forbid the assumption of the title of port warden by persons not duly appointed." When Curtin was appointed port warden by the Governor of New Jersey he notified the port wardens of New York of his appointment, and that he would assume the duties of port warden at Hoboken and Jersey City. The port wardens of New York replied that they considered the act of the State of New Jersey, under which he had been appointed, unconstitutional; that they could not prevent him from exercising the powers of a port warden at New York, and he could not prevent them from exercising the powers of port warden in New Jersey. Curtin agreed with this view, and began to perform his duties in New York. Subsequently the act of 1881 was passed,

and he never knew of its existence until he was indicted under it. By this act the court had no power to impose a fine, but must imprison. On the indictment there was no dispute as to the facts. The only question was as to the constitutionality of the act of 1881. Recorder Smyth, in his charge, held that for the purposes of the trial the act was constitutional, and under his charge the jury rendered a verdict of guilty. Curtin was thereupon sentenced to three months' imprisonment in the New York Penitentiary, the minimum sentence that could be imposed. The case was appealed to the General Term of the Supreme Court, and from thence to the Court of Appeals, and the judgment of the trial court was affirmed in both, but the court of last resort did not render any opinion. The case was thereupon appealed to the United States Supreme Court, where it is now pending and about to be reached for argument. Immediately after his conviction Curtin ceased to act as port warden in New York, and has not violated the statute in any way since that time. He has never been arrested or indicted for or convicted of any other offense. He resides in Hoboken with his wife and family, and is a man of most estimable character. He desires a pardon rather than go to the expense of the argument of the case in the Supreme Court of the United States, and trust to the decision of that body. In addition to the request made by the Governor of New Jersey, all of the port wardens of the city of New York, and who were affected by the acts of this man, who might naturally be expected to oppose the application, unite in asking for his pardon. Upon the foregoing statement of facts, which are not disputed, I am satisfied that as a simple matter of justice a pardon should be granted. It

is apparent not only that his offense was a technical one ; that he had no thought of willfully disobeying the laws of the State of New York, but that he fully believed he had a right to perform the duties of port warden in the city of New York.

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December 30, 1885. Mary Shaffer. Sentenced October 16, 1885 ; county, Steuben ; crime, assault, third degree ; term, six months ; prison, Monroe County Penitentiary.

It is certified to me by the physician of the penitentiary that this woman is *enciente*. Her release is asked in order that she may have the care and comforts which humanity dictates should be given to one in her situation and which necessarily cannot be obtained within the walls of a prison.

## COMMUTATIONS.

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November 27, 1885. Michael Hurley. Sentenced October 1, 1874; county, Westchester; crime, burglary, first degree; term, twenty years; prison, Sing Sing—transferred to Auburn.

Sentence commuted to twelve years, seven months and sixteen days, actual imprisonment, which will terminate May 18, 1887.

This convict forfeited his commutation. It is asked that this be restored, inasmuch as his conduct with the exception of the single act which caused him to lose it has been exceedingly good. His health is claimed to be failing and his friends submit that he cannot survive until the end of his maximum term if compelled to fully serve it out. Under these circumstances, I see no good reason for refusing the request and have, therefore, determined to grant the commutation applied for.

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December 28, 1885. James Arkinson, Martin Higgins and Patrick Murray. Sentenced October 8, 1883; county, Columbia; crime, rape; term, fifteen years; prison, Clinton.

Sentences commuted to imprisonment in Clinton prison for the term of three years each from October 11, 1883.

These three convicts, together with two others, were indicted for the commission of the offense under circumstances which implied the equal guilt or innocence of all.

They were young, and had not enjoyed the advantages of careful training. At the time of the alleged offense, as is usual in such cases, great excitement prevailed in the community, and within two weeks they were indicted and brought to trial. Being too poor themselves to provide counsel, some was assigned them by the court, who from lack of the resources of the convicts or their friends, was unable to find the necessary witnesses, or to investigate the facts, so that a sufficient case could be made for a postponement of the trial. Under these circumstances the three above named convicts were advised to enter a plea of guilty, and to trust to the leniency of the court. Two of the five parties indicted have never been brought to trial, and are still living at their homes. The above statements are certified to me by people of the highest respectability. In addition to them, it is shown by the certificates of two police justices that the complainant had been known for many years as a common prostitute, who had been guilty at various times and places in the immediate locality of the neighborhood where the offense was committed, of keeping houses of prostitution, and who had on many occasions been ordered away by the police. It is shown by certified copies of the records of conviction that the complainant within three months after the commission of the alleged offense, was sentenced to six months' imprisonment in the Albany county penitentiary for being a disorderly person and keeping a house of prostitution, and that at the same time her two minor daughters were convicted of being inmates of a house of prostitution, one being sentenced to the county jail for thirty days, and the other to the Albany county penitentiary for sixty-three days. An affidavit by a police

magistrate also shows that the complainant offered, for a money consideration, after the conviction of these convicts, to swear that at least one of them was wholly guiltless. The judge presiding, in his reply to my communication, states that he has no knowledge of the case, as the convicts pleaded guilty. The district attorney, in his letter, writes that he has not fully investigated the case, but, from what he knows, recommends a commutation of their sentences. While the pleas of guilty of these convicts preclude me from consistently granting an absolute pardon, yet I am lead to the belief that if the conceded facts in the case had been known at the time of the conviction, a light sentence would have been imposed, and that the interests of humanity will be furthered and justice promoted by the commutation of their sentences to three years each. This, if their conduct continues good, will entitle them to be discharged February 10, 1886.

## COMPARATIVE STATEMENT,

*Showing the number of applications for Executive clemency; also the number of orders granted in each year, from 1865 to December 31, 1885, inclusive, and the percentage to Applications and Convictions:*

GOVERNORS.	Years.	Acts of clemency.	Original applications.	Per cent. to applications.	Convictions.	Per cent. to convictions.
Fenton.....	1865	153	278	55	45.053	.0033
Fenton.....	1866	194	452	42	38.334	.0050
Fenton.....	1867	142	440	32	41.046	.0034
Fenton.....	1868	153	400	38	49.913	.0032
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